



## **RFP No: 3722**

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INVITATION: Sealed proposals, subject to the attached conditions, will be received at this office until **May 23, 2013 @ 3:00 p.m.** Central Time for the acquisition of the products/services described below for University of Mississippi Medical Center.

Physician Credentialing/Privileging System

NOTE: THIS RFP CONTAINS MANDATORY REQUIREMENTS TO WHICH NO EXCEPTION MAY BE TAKEN. SEE SECTION VII, ITEM 5, FOR DETAILS.

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**The Vendor must submit proposals and direct inquiries to:**

Sandra Randall  
Technology Consultant  
Information Technology Services  
3771 Eastwood Drive  
Jackson, MS 39211  
(601) 432-8065  
Sandra.Randall@its.ms.gov

To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. The following must be clearly typed on a label affixed to the package in a clearly visible location:

PROPOSAL, SUBMITTED IN RESPONSE TO  
RFP NO. 3722  
due May 23, 2013 @ 3:00 p.m.,  
ATTENTION: Sandra Randall

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**Craig P. Orgeron, Ph.D.**  
**Executive Director, ITS**

## ITS RFP Response Checklist

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RFP Response Checklist: These items should be included in your response to RFP No. 3722.

- \_\_\_\_\_ 1) One clearly marked original response, 10 identical copies, and an electronic copy of the complete proposal. Label the front and spine of the three-ring loose-leaf binder with the Vendor name and RFP number. Include the items listed below inside the binder. Please DO NOT include a copy of the RFP in the binder.
- \_\_\_\_\_ 2) *Submission Cover Sheet*, signed and dated. (Section I)
- \_\_\_\_\_ 3) *Proposal Bond*, if applicable (Section I)
- \_\_\_\_\_ 4) *Proposal Exception Summary*, if applicable (Section V)
- \_\_\_\_\_ 5) Vendor response to *RFP Questionnaire* (Section VI)
- \_\_\_\_\_ 6) Point-by-point response to *Technical Specifications* (Section VII)
- \_\_\_\_\_ 7) Vendor response to *Cost Information Submission* (Section VIII)
- \_\_\_\_\_ 8) *References* (Section IX)

## Table of Contents

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SECTION I .....	4
SUBMISSION COVER SHEET & CONFIGURATION SUMMARY .....	4
PROPOSAL BONDS .....	5
SECTION II .....	6
PROPOSAL SUBMISSION REQUIREMENTS .....	6
SECTION III .....	10
VENDOR INFORMATION .....	10
SECTION IV .....	14
LEGAL AND CONTRACTUAL INFORMATION .....	14
SECTION V .....	26
PROPOSAL EXCEPTIONS .....	26
PROPOSAL EXCEPTION SUMMARY FORM .....	28
SECTION VI .....	29
RFP QUESTIONNAIRE .....	29
SECTION VII .....	32
TECHNICAL SPECIFICATIONS .....	32
SECTION VIII .....	41
COST INFORMATION SUBMISSION .....	41
SECTION IX .....	43
REFERENCES .....	43
REFERENCE FORM .....	45
SUBCONTRACTOR REFERENCE FORM .....	46
ATTACHMENT A .....	47
STANDARD CONTRACTS .....	47
ATTACHMENT B .....	97
SYSTEM REQUIREMENTS .....	97

## SUBMISSION COVER SHEET & CONFIGURATION SUMMARY

Provide the following information regarding the person responsible for the completion of your proposal. This person should also be the person the Mississippi Department of Information Technology Services, **(ITS)**, should contact for questions and/or clarifications.

Name	_____	Phone #	_____
Address	_____	Fax #	_____
	_____	E-mail	_____

Subject to acceptance by **ITS**, the Vendor acknowledges that by submitting a proposal AND signing in the space indicated below, the Vendor is contractually obligated to comply with all items in this Request for Proposal (RFP), including the Standard Contracts in Attachment A if included herein, except those listed as exceptions on the Proposal Exception Summary Form. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. Vendors who sign below may not later take exception to any point during contract negotiations. The Vendor further certifies that the company represented here is an authorized dealer in good standing of the products/services included in this proposal.

**Original signature** of Officer in Bind of Company/Date

Name (typed or printed)

# Title

Company name

Physical address

State of Incorporation

## CONFIGURATION SUMMARY

The Vendor must provide a summary of the main components of products/services offered in this proposal using 100 words or less.

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## **PROPOSAL BONDS**

A Proposal Bond is not required for this procurement.

## **SECTION II**

### **PROPOSAL SUBMISSION REQUIREMENTS**

The objective of the Proposal Submission Requirements section is to provide Vendors with the information required to submit a response to this Request for Proposal (RFP). A Vendor who has responded to previous RFPs issued by **ITS** should not assume that the requirements are the same, as changes may have been made.

1. Failure to follow any instruction within this RFP may, at the State's sole discretion, result in the disqualification of the Vendor's proposal.
2. The State has no obligation to locate or acknowledge any information in the Vendor's proposal that is not presented under the appropriate outline according to these instructions and in the proper location.
3. The Vendor's proposal must be received, in writing, by the office of **ITS** by the date and time specified. **ITS** is not responsible for any delays in delivery or expenses for the development or delivery of proposals. Any proposal received after proposal opening time will be returned unopened. Any proposal received with insufficient postage will be returned unopened.
4. Proposals or alterations by fax, e-mail, or phone will not be accepted.
5. Original signatures are required on one copy of the Submission Cover Sheet and Configuration Summary, and the Vendor's original submission must be clearly identified as the original. The Vendor's original proposal must include the Proposal Bond, (if explicitly required in Section IV).
6. **ITS** reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.
7. **ITS** reserves the right to waive any defect or irregularity in any proposal procedure.
8. The Vendor may intersperse their response following each RFP specification but must not otherwise alter or rekey any of the original text of this RFP. If the State determines that the Vendor has altered any language in the original RFP, the State may, in its sole discretion, disqualify the Vendor from further consideration. The RFP issued by **ITS** is the official version and will supersede any conflicting RFP language submitted by the Vendor.

The Vendor must conform to the following standards in the preparation of the Vendor's proposal:

- 8.1 The Vendor is required to submit one clearly marked original response and 10 identical copy/copies of the complete proposal, including all sections and exhibits, in three-ring binders.

- 8.2 To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. A label containing the information on the RFP cover page must be clearly typed and affixed to the package in a clearly visible location.
  - 8.3 Number each page of the proposal.
  - 8.4 Respond to the sections and exhibits in the same order as this RFP.
  - 8.5 Label and tab the responses to each section and exhibit, using the corresponding headings from the RFP.
  - 8.6 If the Vendor does not agree with any item in any section, then the Vendor must list the item on the *Proposal Exception Summary Form*. (See Section V for additional instructions regarding Vendor exceptions.)
  - 8.7 Occasionally, an outline point in an attachment requests information which is not applicable to the products/services proposed. If the Vendor is certain the point does not apply to the given RFP, the Vendor should respond with "NOT APPLICABLE."
  - 8.8 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
  - 8.9 When an outline point/attachment is a statement provided for the Vendor's information only, the Vendor need only read that point. The Vendor acknowledges having read and accepting, or taking exception to, all sections by signing the *Submission Cover Sheet* and providing a *Proposal Exception Summary Form*.
  - 8.10 Where a minimum requirement has been identified, respond by stating the item (e.g., device name/model number, guaranteed response time) proposed and how it will meet the specifications.
  - 8.11 The Vendor must fully respond to each requirement within the *Technical Specifications* by fully describing the manner and degree by which the proposal meets or exceeds said requirements.
9. It is the responsibility of the Vendor to clearly identify all costs associated with any item or series of items in this RFP. The Vendor must include and complete all parts of the cost proposal in a clear and accurate manner. **Omissions, errors, misrepresentations, or inadequate details in the Vendor's cost proposal may be grounds for rejection of the Vendor's proposal. Costs that are not clearly identified will be borne by the Vendor.** The Vendor must complete the *Cost Information Submission* in this RFP, which outlines the minimum requirements for providing cost information. The Vendor should supply supporting details as described in the *Cost Information Submission*.

10. **ITS** reserves the right to request additional information or clarification of a Vendor's proposal. The Vendor's cooperation during the evaluation process in providing **ITS** staff with adequate responses to requests for clarification will be considered a factor in the evaluation of the Vendor's overall responsiveness. Lack of such cooperation or failure to provide the information in the manner required may, at the State's discretion, result in the disqualification of the Vendor's proposal.
11. Unsolicited clarifications and updates submitted after the deadline for proposals will be accepted or rejected at the sole discretion of **ITS**.
12. Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:
  - 12.1 A clarification to a proposal that includes a newly announced product line or service with equal or additional capability to be provided at or less than the proposed price will be considered.
  - 12.2 Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Vendor normally uses to convey customer information.
  - 12.3 Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
  - 12.4 The Vendor must follow procedures outlined herein for submitting updates and clarifications.
  - 12.5 The Vendor must submit a statement outlining the circumstances for the clarification.
  - 12.6 The Vendor must submit one clearly marked original, 10 copies, and an electronic copy of the clarification.
  - 12.7 The Vendor must be specific about which part of the original proposal is being changed by the clarification (i.e., must include exact RFP reference to section and outline point).
13. **Communications with State**

From the issue date of this RFP until a Vendor is selected and the selection is announced, responding Vendors or their representatives may not communicate, either orally or in writing regarding this RFP with any statewide elected official, state officer or employee, member of the legislature or legislative employee except as noted herein. To ensure equal treatment for each responding Vendor, all questions regarding this RFP must be submitted in writing to the State's contact person for the selection process, and not later than the last date for accepting responding Vendor questions provided in this RFP. All such questions will be answered officially by the State in writing. All such questions and



answers will become addenda to this RFP, and they will be posted to the ITS web site. Vendors failing to comply with this requirement will be subject to disqualification.

13.1 The State's contact for the selection process is:

Sandra Randall, Technology Consultant, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8065, Sandra.Randall@its.ms.gov;

13.2 Vendor may consult with State representatives as designated by the State's contact identified in 13.1 above in response to State-initiated inquiries. Vendor may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.

### **SECTION III VENDOR INFORMATION**

The objective of the Vendor Information section of this RFP is to provide Vendors with information required to respond to the RFP successfully.

1. **Interchangeable Designations**

The terms “Vendor” and “Contractor” are referenced throughout this RFP. Generally, references to the “Vendor” are used in conjunction with the proposing organization and procurement process leading up to the final RFP selection and award. The term “Contractor” denotes the role assumed, post-award, by the winning Vendor. Additionally, the terms “State of Mississippi,” “State” or “ITS” may be used interchangeably throughout this RFP to denote the political entity issuing the RFP and requesting responses from Vendors throughout these specifications. References to a specific agency, institution or other political entity represent the client or customer on whose behalf ITS is issuing the RFP.

2. **Vendor’s Responsibility to Examine RFP**

Vendors must examine all documents, forms, specifications, standard provisions, and instructions.

3. **Proposal as Property of State**

All written proposal material becomes the property of the State of Mississippi.

4. **Written Amendment to RFP**

Any interpretation of an ITS RFP will be made by written amendment only. The State will not be responsible for any other explanation of this RFP. A copy of any amendment will be posted on the ITS website, together with the associated RFP specification. Vendors are required to check the ITS website periodically for RFP amendments before the proposal opening date at:

[http://www.its.ms.gov/Procurement/Pages/RFPS\\_Awaiting.aspx](http://www.its.ms.gov/Procurement/Pages/RFPS_Awaiting.aspx)

Any and all amendments will be posted no later than noon, seven days prior to the proposal opening date listed on the cover page of this RFP. If you are unable to access the ITS website, you may contact the ITS technology consultant listed on page one of this RFP and request a copy.

5. **Oral Communications Not Binding**

Only transactions which are in writing from ITS may be considered official. No negotiations, decisions, or actions shall be executed by any Vendor as a result of any discussions with any State employee.

6. **Vendor’s Responsibility for Delivery**

Vendors must ensure, through reasonable and sufficient follow-up, proper compliance with, and fulfillment of all schedules and deliverables specified within the body of this

RFP. The State will not be responsible for the failure of any delivery medium for submission of information to or from the Vendor, including but not limited to, public and private carriers, U.S. mail, Internet Service Providers, facsimile, or e-mail.

7. **Evaluation Criteria**

The State's intent in issuing this RFP is to award a contract to the lowest and best responsive Vendor who meets specifications, considering price and other factors. The Vendor's past performance, cooperation, and ability to provide service and training are general factors that will be weighed in the selection process. More specific information concerning evaluation criteria is presented in *Technical Specifications*.

8. **Multiple Awards**

ITS reserves the right to make multiple awards.

9. **Right to Award in Whole or Part**

ITS reserves the right to approve an award by individual items or in total, whichever is deemed to be in the best interest of the State of Mississippi.

10. **Right to Use Proposals in Future Projects**

The State reserves the right to evaluate the awarded proposal from this RFP, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects if (a) it is deemed to be in the best interest of the State to do so; and (b) the Vendor is willing to extend a cost less than or equal to that specified in the awarded proposal and resulting contract. A decision concerning the utilization of a Vendor's proposal for future projects is solely at the discretion of the State and requires the agreement of the proposing Vendor. The State's decision to reuse an awarded proposal will be based upon such criteria as: (1) the customer's business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Vendor, market, and technical environments since the initial award.

11. **Price Changes During Award or Renewal Period**

A price increase will not be accepted during the award period or the renewal period, unless stipulated in the contract. However, the State will always take advantage of price decreases.

12. **Right to Request Information**

The State reserves the right to request information relative to a Vendor's references and financial status and to visit a Vendor's facilities during normal working hours. The State also reserves the right to request a current financial statement, prepared and certified by an independent auditing firm, and reserves the right to require that Vendors document their financial ability to provide the products and services proposed up to the total dollar amount of the Vendor's cost proposal. The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, even if that customer is not included in the Vendor's list of references.

**13. Vendor Personnel**

For RFPs including professional services specifications, the Vendor will be required to provide and/or certify the following for each individual included in the Vendor's proposal:

- 13.1 A direct telephone number at which the individual may be contacted for a telephone interview. The State will pay toll charges in the continental United States. The Vendor must arrange a toll-free number for all other calls.
- 13.2 That, if onsite interviews are required, the individual can be at the specified location in Mississippi within the timeframe specified. All costs associated with onsite interviews will be the responsibility of the Vendor.
- 13.3 That the individual is proficient in spoken and written English;
- 13.4 That the individual is a U.S. citizen or that the individual meets and will maintain employment eligibility requirements in compliance with all USCIS regulations. The Vendor must provide evidence of identification and employment eligibility prior to the award of a contract that includes any personnel who are not U. S. citizens.
- 13.5 That the personnel assigned to a project will remain a part of the project throughout the duration of the contract as long as the personnel are employed by the Vendor, unless replaced by the Vendor at the request of the State. This requirement includes the responsibility for ensuring all non-citizens maintain current USCIS eligibility throughout the duration of the contract.

**14. Vendor Imposed Constraints**

The Vendor must specifically document what limitations, if any, exist in working with any other Contractor acting in the capacity of the State's business partner, subcontractor or agent who may be managing any present or future projects; performing quality assurance; integrating the Vendor's software; and/or providing web-hosting, hardware, networking or other processing services on the State's behalf. The project relationship may be based on roles as either equal peers; supervisory – subordinate; or subordinate – supervisory, as determined by the State. The State recognizes that the Vendor may have trade secrets, intellectual property and/or business relationships that may be subject to its corporate policies or agreements. The State must understand these issues in order to decide to what degree they may impact the State's ability to conduct business for this project. These considerations will be incorporated accordingly into the proposal evaluation and selection process. The understanding reached between the Vendor and the State with regard to this business relationship precludes the Vendor from imposing any subsequent limitations of this type in future project undertakings by the State.

15. **Best and Final Offer**

The State reserves the right to solicit Best and Final Offers (BAFOs) from Vendors, principally in situations in which proposal costs eclipse available funding or the State believes none of the competing proposals presents a Best Value (lowest and best proposal) opportunity. Because of the time and expense incurred by both the Vendor community and the State, BAFOs are not routinely conducted. Vendors should offer their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. Vendors that remain in a competitive range within an evaluation may be requested to tender Best and Final Offers, at the sole discretion of the State. All such Vendors will be provided an equal opportunity to respond with a Best and Final Offer under a procedure to be defined by the State that encompasses the specific, refined needs of a project, as part of the BAFO solicitation. The State may re-evaluate and amend the original project specifications should it be deemed necessary in order to improve the opportunity for attaining Best Value scenarios from among the remaining competing Vendors. All BAFO proceedings will be uniformly conducted, in writing and subject to solicitation by the State and receipt from the Vendors under a precise schedule.

16. **Restriction on Advertising**

The Vendor must receive written approval from the State before advertising or referencing the award of the contract or the services being provided. The Vendor must agree not to refer to awards in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the State of Mississippi.

17. **Rights Reserved to Use Existing Product Contracts**

The State reserves the right on turnkey projects to secure certain products from other existing ITS contracts if it is in its best interest to do so. If this option is exercised, then the awarded Vendor must be willing to integrate the acquisition and implementation of such products within the schedule and system under contract.

18. **Additional Information to be Included**

In addition to answering each specification within this RFP, the Vendor must include complete product/service information, including product pictorials and technical/descriptive literature relative to any product/service offered with the proposal. Information submitted must be sufficiently detailed to substantiate that the products/services offered meet or exceed specifications.

19. **Valid Contract Required to Begin Work**

The successful Vendor should not commence any billable work until a valid contract has been executed. Any work done by the successful Vendor prior to the execution of the contract is done at the Vendor's sole risk. The State is under no obligation to pay for work done prior to the execution of a contract.

## SECTION IV LEGAL AND CONTRACTUAL INFORMATION

The objective of the *Legal and Contractual Information* section is to provide Vendors with information required to complete a contract or agreement with **ITS** successfully.

1. **Acknowledgment Precludes Later Exception**

By signing the *Submission Cover Sheet*, the Vendor is contractually obligated to comply with all items in this RFP, including the *Standard Contracts* in Attachment A if included herein, except those specifically listed as exceptions on the *Proposal Exception Summary Form*. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. Vendors who respond to this RFP by signing the *Submission Cover Sheet* may not later take exception to any item in the RFP during contract negotiations. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. No exceptions by subcontractors or separate terms and conditions will be entertained after the fact.

2. **Failure to Respond as Prescribed**

Failure to respond as described in Section II: *Proposal Submission Requirements* to any item in the sections and exhibits of this RFP, including the *Standard Contracts* attached as Attachment A, if applicable, shall contractually obligate the Vendor to comply with that item.

3. **Contract Documents**

**ITS** will be responsible for all document creation and editorial control over all contractual documentation related to each procurement project. The following documents will normally be included in all contracts between **ITS** and the Vendor:

- 3.1 The Proposal Exception Summary Form as accepted by **ITS**;
- 3.2 Contracts which have been signed by the Vendor and **ITS**;
- 3.3 **ITS'** Request for Proposal, including all addenda;
- 3.4 Official written correspondence from **ITS** to the Vendor;
- 3.5 Official written correspondence from the Vendor to **ITS** when clarifying the Vendor's proposal; and
- 3.6 The Vendor's proposal response to the **ITS** RFP.

4. **Order of Precedence**

When a conflict arises regarding contract intent due to conflicting statements in documents included in the contract, the order of precedence of each document is as listed above unless modification of order is negotiated and agreed upon by both **ITS** and the winning Vendor.

5. **Additional Contract Provisions**

The contract will also include such additional provisions, which are not inconsistent or incompatible with the material terms of this RFP, as may be agreed upon by the parties. All of the foregoing shall be in such form and substance as prescribed by the State.

6. **Contracting Agent by Law**

The Executive Director of **ITS** is, by law, the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of computer and telecommunications equipment, systems, software, and services (Section 25-53-1, et seq., of the Mississippi Code Annotated). **ITS** is issuing this RFP on behalf of the procuring agency or institution. **ITS** and the procuring agency or institution are sometimes collectively referred to within this RFP as "State."

7. **Mandatory Legal Provisions**

- 7.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
- 7.2 Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Vendor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
- 7.3 The Vendor shall have no limitation on liability for claims related to the following items:
  - 7.3.1 Infringement issues;
  - 7.3.2 Bodily injury;
  - 7.3.3 Death;
  - 7.3.4 Physical damage to tangible personal and/or real property; and/or
  - 7.3.5 The intentional and willful misconduct or negligent acts of the Vendor and/or Vendor's employees or subcontractors.
- 7.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
- 7.5 Any contract negotiated under this RFP will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.

- 7.6 Any contract negotiated under this RFP is cancelable in the event the funding authority does not appropriate funds. Notice requirements to Vendor cannot exceed sixty (60) days.
- 7.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Vendor, Vendor agents, subcontractors, or assignees.
- 7.8 The State will deliver payments to the Vendor within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Vendor's products/services. No late charges will exceed 1.5% per month on any unpaid balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated. Seller understands and agrees that Purchaser is exempt from the payment of taxes.
- 7.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Vendor.

**8. Approved Contract**

- 8.1 Award of Contract - A contract is considered to be awarded to a proposer once the proposer's offering has been approved as lowest and best proposal through:
  - 8.1.1 Written notification made to proposers on **ITS** letterhead, or
  - 8.1.2 Notification posted to the **ITS** website for the project, or
  - 8.1.3 CP-1 authorization executed for the project, or
  - 8.1.4 The **ITS** Board's approval of same during an open session of the Board.
- 8.2 **ITS** statute specifies whether **ITS** Director approval or **ITS** Board approval is applicable for a given project, depending on the total lifecycle cost of the contract.
- 8.3 A contract is not deemed final until five (5) working days after either the award of contract or post procurement review, as stipulated in the **ITS** Protest Procedure and Policy. In the event of a valid protest, the State may, at its sole discretion, continue the procurement or stay the procurement in accordance with the **ITS** Protest Procedure and Policy. If the procurement is stayed, the contract is not deemed final until the protest is resolved.

**9. Contract Validity**

All contracts are valid only if signed by the Executive Director of **ITS**.



**10. Order of Contract Execution**

Vendors will be required to sign contracts and to initial all contract changes before the Executive Director of **ITS** signs.

**11. Availability of Funds**

All contracts are subject to availability of funds of the acquiring State entity and are contingent upon receipt by the winning Vendor of a purchase order from the acquiring State entity.

**12. CP-1 Requirement**

All purchase orders issued for goods and services acquired from the awarded Vendor under this RFP must be encoded by the Customer agency with a CP-1 approval number assigned by **ITS**. This requirement does not apply to acquisitions that by policy have been delegated to State entities.

**13. Requirement for Electronic Payment and Invoicing**

13.1 Payments to the awarded Vendor for all goods and services acquired under this RFP by state agencies that make payments through the Statewide Automated Accounting System (“SAAS”) will be made electronically, via deposit to the bank account of the Vendor’s choice. The awarded Vendor must enroll and be activated in PayMode™, the State’s current vehicle for sending and receiving electronic payments, prior to receiving any payments from state agencies. There is no charge for a Vendor to enroll or receive payments via PayMode. For additional information on PayMode, including registration instructions, Vendors should visit the following website: <http://portal.paymode.com/ms/>. Vendors may also request assistance from the Mississippi Management and Reporting System (MMRS) Call Center regarding PayMode registration by contacting [mash@dfa.state.ms.us](mailto:mash@dfa.state.ms.us).

13.2 For state agencies that make payments through SAAS, the awarded Vendor is required to submit electronically all invoices for goods and services acquired under this RFP, along with appropriate supporting documentation, as directed by the State. Should the requirement for electronic invoicing be implemented during the term of the project contract, the State will work with the Vendor to determine a reasonable timeframe for initiating electronic invoicing.

13.3 Items 13.1 and 13.2 only apply to state agencies that make payments through SAAS. Payments and invoices for all other entities will conform to their standard methods of payment to contractors.

**14. Time For Negotiations**

14.1 All contractual issues must be successfully negotiated within fifteen (15) working days from the Vendor’s initial receipt of the project contract from **ITS**, unless **ITS** consents to extend the period. Failure to complete

negotiations within the stated time period constitutes grounds for rejection of the Vendor's response to this RFP. **ITS** may withdraw the proposal award and begin negotiations with the next ranked Vendor immediately or pursue any other option.

- 14.2 Negotiations shall be limited to items to which the Vendor has noted as exceptions on their Proposal Exception Summary Form, as well as any new items that the State may require. All contract changes requested by the Vendor related to such exceptions noted in Vendor's proposal shall be submitted three (3) working days prior to scheduled negotiations, unless **ITS** consents to a different period.

15. **Prime Contractor**

The selected Vendor will be designated the prime contractor in the proposal, and as such, shall be solely responsible for all products/services offered in the proposal and for the fulfillment of the contract with the State.

16. **Sole Point of Contact**

**ITS** will consider the selected Vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

- 16.1 The Vendor must acknowledge and agree that in matters of proposals, clarifications, negotiations, contracts and resolution of issues and/or disputes, the Vendor represents all contractors, third parties and/or subcontractors the Vendor has assembled for this project. The Vendor's commitments are binding on all such parties and consequently the State is only required to negotiate with the Vendor.

- 16.2 Furthermore, the Vendor acknowledges and agrees to pass all rights and/or services related to all general consulting, services leasing, software licensing, warranties, hardware maintenance and/or software support to the State from any contractor, third party or subcontractor without the State having to negotiate separately or individually with any such parties for these terms or conditions.

- 16.3 Should a proposing Vendor wish to assign payment of any or all charges resulting from this contract to a third party, Vendor must disclose that fact in his/her proposal, along with the third party's name, address, nature of business, and relationship to the proposing Vendor, the reason for and purpose of the assignment, and all conditions of the assignment, including but not limited to a copy of an assignment document to be executed by the State, the Vendor, and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Vendor must clearly and definitively state in his/her proposal whether the proposal is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the proposal, contract, and assignment document must include language

specifically guaranteeing that the proposing Vendor is solely and fully liable and responsible for the performance of its obligations under the subject contract. No assignment of payment will be considered at the time of purchase unless such assignment was fully disclosed in the Vendor's proposal and subsequently accepted by the State.

**17. ITS Approval of Subcontractor Required**

Unless provided in the contract, the Vendor shall not contract with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. **ITS** reserves the right of refusal and the right to request replacement of a subcontractor due to unacceptable work or conduct. This provision should not be interpreted as requiring the approval of individual contracts of employment between the Vendor and personnel assigned for services under the contract.

**18. Inclusion of Subcontract Agreements**

Copies of any agreements to be executed between the Vendor and any subcontractors must be included in the Vendor's proposal.

**19. Negotiations with Subcontractor**

In order to protect the State's interest, **ITS** reserves the right to attempt to resolve the contractual disagreements that may arise between the Vendor and its subcontractor after award of the contract.

**20. References to Vendor to Include Subcontractor**

All references in the RFP to "Vendor" shall be construed to encompass both the Vendor and its subcontractors.

**21. Outstanding Vendor Obligations**

21.1 Any Vendor who presently owes the State of Mississippi money pursuant to any contract for which **ITS** is the contracting agent and who has received written notification from **ITS** regarding the monies owed, must submit, with the proposal, a certified check in the amount due and owing in order for the proposal in response to this RFP to be considered. For a Vendor currently in bankruptcy as of the RFP submission date, this requirement is met, if and only if, **ITS** has an active petition before the appropriate bankruptcy court for recovery of the full dollar amount presently owed to the State of Mississippi by that Vendor. If the Vendor has emerged from bankruptcy by the RFP submission date, the Vendor must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any proposal being considered.

21.2 Any Vendor who is presently in default on existing contracts for which **ITS** is the contracting agent, or who otherwise is delinquent in the performance of any such contracted obligations, is in the sole judgment of the State required

to make arrangement for fulfilling outstanding obligations to the satisfaction of the State in order for the proposal to be considered.

- 21.3 The State, at its sole discretion, may reject the proposal of a Vendor with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of proposal submission.
22. **Equipment Condition**  
For all RFPs requiring equipment, the Vendor must furnish only new equipment in response to **ITS** specifications, unless an explicit requirement for used equipment is otherwise specified.
23. **Delivery Intervals**  
The Vendor's proposal must specify, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, delivery and installation intervals after receipt of order.
24. **Pricing Guarantee**  
The Vendor must explicitly state, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, how long the proposal will remain valid. Unless stated to the contrary in the *Technical Specifications*, pricing must be guaranteed for a minimum of ninety (90) days.
25. **Shipping Charges**  
For all RFPs requiring shipment of any product or component, all products must be delivered FOB destination to any location within the geographic boundaries of the State with all transportation charges prepaid and included in the RFP proposal or LOC quotation. Destination is the point of use.
26. **Amortization Schedule**  
For all RFPs requiring equipment, contracts involving the payment of interest must include an amortization schedule clearly documenting the amount of interest payable over the term of the contract.
27. **Americans with Disabilities Act Compliance for Web Development and Portal Related Services**  
All Web and Portal development work must be designed and implemented in compliance with the Electronic and Information Technology Accessibility Standards associated with Section 508 of the Rehabilitation Act and with the Web Accessibility Initiative (WAI) of the W3C.
28. **Ownership of Developed Software**
- 28.1 When specifications require the Vendor to develop software for the State, the Vendor must acknowledge and agree that the State is the sole owner of such developed software with exclusive rights to use, alter, or distribute the

software without restriction. This requirement applies to source code, object code, and documentation.

- 28.2 The State may be willing to grant the Vendor a nonexclusive license to use the State's software subject to devising acceptable terms and license fees. This requirement is a matter of State Law, and not negotiable.

29. **Ownership of Custom Tailored Software**

In installations where the Vendor's intellectual property is modified and custom-tailored to meet the needs of the State, the Vendor must offer the State an application license entitling the State to use, and/or alter the software without restriction. These requirements apply to source code, object code and documentation.

30. **Terms of Software License**

The Vendor acknowledges and agrees that the term of all software licenses provided to the State shall be perpetual unless stated otherwise in the Vendor's proposal.

31. **The State is Licensee of Record**

The Vendor must not bypass the software contracting phase of a project by licensing project software intended for State use in its company name. Upon award of a project, the Vendor must ensure that the State is properly licensed for all software that is proposed for use in a project.

32. **Compliance with Enterprise Security Policy**

Any solution proposed in response to this RFP must be in compliance with the State of Mississippi's Enterprise Security Policy. The Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines and covers the following topics: web servers, email, virus prevention, firewalls, data encryption, remote access, passwords, servers, physical access, traffic restrictions, wireless, laptop and mobile devices, disposal of hardware/media, and application assessment/certification. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from this RFP and require the Vendor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

The Enterprise Security Policy is available to third parties on a need-to-know basis and requires the execution of a non-disclosure agreement prior to accessing the policy. The Vendor may request individual sections of the Enterprise Security Policy or request the entire document. Prior to the Vendor receiving the requested policy information, the Vendor must sign and submit the non-disclosure agreement found on the ITS website, <http://www.its.ms.gov>, as follows: hover over "Services" at the top of the screen; select "Information Security", on the right hand side of the page, click on the link "Policy & Plans". The form can be found at the "Enterprise Security Policy" link under the "Third Party" heading. The complete web address is shown below:

<http://www.its.ms.gov/Services/Pages/ENTERPRISE-SECURITY-POLICY.aspx>

Vendor must provide contact information (name, email address, phone number) that can be used to coordinate the secure delivery of the requested information.

33. **Negotiating with Next-Ranked Vendor**

Should the State cease doing business with any Vendor selected via this RFP process, for any reason, the State reserves the right to initiate negotiations with the next ranked Vendor.

34. **Disclosure of Proposal Information**

Vendors should be aware that any information in a proposal may be subject to disclosure or reproduction under the Mississippi Public Records Act of 1983, defined in Section 25-61-1 et seq. of the Mississippi Code Annotated. All disclosures of proposal information will be made in compliance with the **ITS** Public Records Procedures established in accordance with the Mississippi Public Records Act. The **ITS** Public Records Procedures are available in Section 019-010 of the **ITS** Procurement Handbook, on the **ITS** Internet site at:

<http://dsitspe01.its.ms.gov/its/procman.nsf/f4ad43bd44ad9d8c86256daa0063e1f0/bb780b5a8360c3138625765d004e4aff?OpenDocument> or from **ITS** upon request.

As outlined in the Third Party Information section of the **ITS** Public Records Procedures, **ITS** will give written notice to any affected Vendor of a request to view or reproduce the Vendor's proposal or portion thereof. **ITS** will not, however, give such notice with respect to summary information prepared in connection with the State's review or evaluation of a Vendor's proposal, including, but not limited to, written presentations to the **ITS** Board or other approving bodies, and/or similar written documentation prepared for the project file. In addition, **ITS** will not provide third-party notice for requests for any contract executed as a result of this RFP, with the exception of information contained in contract exhibits identified and labeled as confidential during the contract negotiation process. **ITS** will provide third-party notice of requests for any such confidential exhibits to allow Vendor the opportunity to protect the information by court order as outlined in the **ITS** Public Records Procedures.

Summary information and contract terms, as defined above, become the property of **ITS**, who has the right to reproduce or distribute this information without notification.

Vendors should further be aware that requests for disclosure of proposal and contract information are sometimes received by **ITS** significantly after the proposal opening date. **ITS** will notify the signatory "Officer in Bind of Company" provided in Section I of this RFP for Notification of Public Records Requests in the event information is requested that your company might wish to consider protecting as a trade secret or as confidential commercial or financial information. If the "Officer in Bind of Company" should not be used for notification of public records requests, Vendor should provide the alternative contact information in response to this RFP item.

35. **Risk Factors to be Assessed**

The State will assess risk factors that may initially exist within a given procurement and that may develop over the course of a procurement process as facts become known. The State, at its sole discretion, may employ the following mechanisms in mitigating these risks: proposal bonding, performance bonding, progress payment plan with retainage, inclusion of liquidated damages, and withholding payment for all portions of the products/services acquired until final acceptance. The Vendor must agree to incorporate any or all of the above terms and conditions into the customer agreement.

36. **Proposal Bond**

The Vendor is not required to include a proposal bond with its RFP proposal.

37. **Performance Bond/Irrevocable Bank Letter of Credit**

The Vendor is not required to include the price of a performance bond or irrevocable bank letter of credit with its RFP proposal.

38. **Responsibility for Behavior of Vendor Employees/Subcontractors**

The Vendor will be responsible for the behavior of all its employees and subcontractors while on the premises of any State agency or institution. Any Vendor employee or subcontractor acting in a manner determined by the administration of any State agency or institution to be detrimental, abusive, or offensive to any of the staff or student body of any State agency or institution will be asked to leave the premises and can be suspended from further work on the premises.

39. **Protests**

The Executive Director of **ITS** and/or the Board Members of **ITS** or their designees shall have the authority to resolve Vendor protests in connection with the selection for award of a contract. Copies of the protest procedures are available on the **ITS** Internet site - **ITS** Protest Procedure and Policy, Section 019-020, **ITS** Procurement Handbook at:

<http://dsitspe01.its.ms.gov/its/procman.nsf/f4ad43bd44ad9d8c86256daa0063e1f0/f227957c9c49a38a8625767900790c4e?OpenDocument> or from **ITS** upon request.

40. **Protest Bond**

Potential Vendors may protest any of the specifications of this RFP on the belief that the specification is unlawful, unduly restrictive, or unjustifiably restraining to competition. Any such protest must be in writing and submitted to the **ITS** Executive Director along with the appropriate protest bond within five (5) working days of the Official Release of the RFP, as defined in the **ITS** Protest Procedure and Policy. The outside of the envelope must be marked "Protest" and must specify RFP number 3722.

As a condition precedent to filing any protest related to this procurement, the Vendor must procure, submit to the **ITS** Executive Director with its written protest, and maintain in effect at all times during the course of the protest or appeal thereof, a protest bond in the full amount of the total estimated project lifecycle cost or \$250,000.00, whichever is less. The total estimated project lifecycle cost will be the amount used by **ITS** in the

computation of cost points, as the low cost in the denominator of the cost evaluation formula. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the protest bond and shall identify a contact person to be notified in the event that the State is required to take action against the bond. The protest bond shall not be released to the protesting Vendor until the protest is finally resolved and the time for appealing said protest has expired. The protest bond shall be procured at the protesting Vendor's expense and be payable to the Mississippi Department of Information Technology Services. Prior to approval of the protest bond, **ITS** reserves the right to review the protest bond and require the protesting Vendor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by the protesting Vendor. The State may claim against the protest bond as specified in Section 25-53-5 (n) of the Mississippi Code of 1972, as amended during the 1998 Mississippi legislative session, in addition to all other rights and remedies the State may have at law or in equity.

Should the written protest submitted by the Vendor fail to comply with the content requirements of **ITS'** protest procedure and policy, fail to be submitted within the prescribed time limits, or fail to have the appropriate protest bond accompany it, the protest will be summarily dismissed by the **ITS** Executive Director.

41. **Mississippi Employment Protection Act**

Effective July 1, 2008, Vendor acknowledges that if awarded, it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Vendor will agree to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State.

Vendor acknowledges and certifies that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi.

Vendor acknowledges that violating the E-Verify Program (or successor thereto) requirements subjects Vendor to the following: (a) cancellation of any state or public contract and ineligibility for any state or public contract for up to three (3) years, with notice of such cancellation being made public, or (b) the loss of any license, permit, certification or other document granted to Vendor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or



(c) both. Vendor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

## SECTION V PROPOSAL EXCEPTIONS

Please return the *Proposal Exception Summary Form* at the end of this section with all exceptions to items in any Section of this RFP listed and clearly explained or state “No Exceptions Taken.” If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions to any item in this RFP document.

1. Unless specifically disallowed on any specification herein, the Vendor may take exception to any point within this RFP, including a specification denoted with “shall” or “must,” as long as the following are true:
  - 1.1 The specification is not a matter of State law;
  - 1.2 The proposal still meets the intent of the RFP;
  - 1.3 A *Proposal Exception Summary Form* is included with Vendor’s proposal; and
  - 1.4 The exception is clearly explained, along with any alternative or substitution the Vendor proposes to address the intent of the specification, on the *Proposal Exception Summary Form*.
2. The Vendor has no liability to provide items to which an exception has been taken. **ITS** has no obligation to accept any exception. During the proposal evaluation and/or contract negotiation process, the Vendor and **ITS** will discuss each exception and take one of the following actions:
  - 2.1 The Vendor will withdraw the exception and meet the specification in the manner prescribed;
  - 2.2 **ITS** will determine that the exception neither poses significant risk to the project nor undermines the intent of the RFP and will accept the exception;
  - 2.3 **ITS** and the Vendor will agree on compromise language dealing with the exception and will insert same into the contract; or
  - 2.4 None of the above actions is possible, and **ITS** either disqualifies the Vendor’s proposal or withdraws the award and proceeds to the next ranked Vendor.
3. Should **ITS** and the Vendor reach a successful agreement, **ITS** will sign adjacent to each exception which is being accepted or submit a formal written response to the *Proposal Exception Summary* responding to each of the Vendor’s exceptions. The *Proposal Exception Summary*, with those exceptions approved by **ITS**, will become a part of any contract on acquisitions made under this RFP.

4. An exception will be accepted or rejected at the sole discretion of the State.
5. The State desires to award this RFP to a Vendor or Vendors with whom there is a high probability of establishing a mutually agreeable contract, substantially within the standard terms and conditions of the State's RFP, including the *Standard Contracts* in Attachment A, if included herein. As such, Vendors whose proposals, in the sole opinion of the State, reflect a substantial number of material exceptions to this RFP, may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their proposals.
6. For Vendors who have successfully negotiated a contract with **ITS** in the past, **ITS** requests that, prior to taking any exceptions to this RFP, the individual(s) preparing this proposal first confer with other individuals who have previously submitted proposals to **ITS** or participated in contract negotiations with **ITS** on behalf of their company, to ensure the Vendor is consistent in the items to which it takes exception.

### PROPOSAL EXCEPTION SUMMARY FORM

**List and clearly explain any exceptions, for all RFP Sections and Attachments, in the table below.**

<b>ITS RFP Reference</b>	<b>Vendor Proposal Reference</b>	<b>Brief Explanation of Exception</b>	<b>ITS Acceptance (sign here only if accepted)</b>
(Reference specific outline point to which exception is taken)	(Page, section, items in Vendor's proposal where exception is explained)	(Short description of exception being made)	
1.			
2.			
3.			
4.			
5.			
6.			
7.			

## SECTION VI RFP QUESTIONNAIRE

Please answer each question or provide the information as requested in this section.

1. **Statewide Automated Accounting System (SAAS) Information for State of Mississippi Vendor File**

1.1 **SAAS Vendor Code:** Any Vendor who has not previously done business with the State and has not been assigned a SAAS Vendor code should furnish a signed copy of an IRS W-9 form with the proposal. A copy of the W-9 Form can be obtained at the following link on the ITS website:

1.2 <http://www.its.ms.gov/Procurement/Pages/Vendor.aspx>

1.3 Vendors who have previously done business with the State should furnish ITS with their SAAS Vendor code.

SAAS Vendor Code: \_\_\_\_\_ OR Signed W-9 Form Attached: \_\_\_\_\_

1.4 **Vendor Self-Certification Form:** The State of Mississippi, in an effort to capture participation by minority Vendors, asks that each Vendor review the State of Mississippi Minority Vendor Self Certification Form. This information is for tracking/reporting purposes only, and will not be used in determining which Vendor will be chosen for the project. Any Vendor who can claim status as a Minority Business Enterprise or a Woman Business Enterprise in accordance with the definitions on this form and who has not previously submitted a form to the State of Mississippi should submit the completed form with the proposal. A copy of the Minority Vendor Self-Certification Form can be obtained at: [http://www.mississippi.org/assets/docs/minority/minority\\_vendor\\_selfcertform.pdf](http://www.mississippi.org/assets/docs/minority/minority_vendor_selfcertform.pdf). Please direct any questions about minority certification in Mississippi to the Minority Business Enterprise Division of the Mississippi Development Authority by telephone at (601) 359-3448 or via email at [minority@mississippi.org](mailto:minority@mississippi.org).

Minority Vendor Self-Certification Form Included: \_\_\_\_\_  
Minority Vendor Self-Certification Form Previously Submitted: \_\_\_\_\_  
Not claiming Minority or Women Business Enterprise Status: \_\_\_\_\_

2. **Certification of Authority to Sell**

The Vendor must certify Vendor is a seller in good standing, authorized to sell and able to deliver all items and related services proposed in the State of Mississippi in the time frame specified. Does the Vendor make these certifications? (A yes or no answer is required.)



Remit Address (if different):

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7. **Web Amendments**

As stated in Section III, **ITS** will use the **ITS** website to post amendments regarding RFPs before the proposal opening at:

[http://www.its.ms.gov/Procurement/Pages/RFPS\\_Awaiting.aspx](http://www.its.ms.gov/Procurement/Pages/RFPS_Awaiting.aspx)

**ITS** may post clarifications until noon seven days prior to the proposal opening date listed on the cover page of this RFP or the posted extension date, if applicable.

Vendors may list any questions or items needing clarification discovered in the week prior to the proposal opening in a written format at the beginning of the proposal binder or in the comment section for the individual offering.

Does the Vendor certify that they have reviewed a copy of the **ITS** amendments for RFPs as above stated? (A yes or no answer is required.)

## **SECTION VII TECHNICAL SPECIFICATIONS**

### **1. How to Respond to this Section**

- 1.1 Beginning with Item 2 of this section, label and respond to each outline point in this section as it is labeled in the RFP.
- 1.2 The Vendor must respond with “ACKNOWLEDGED,” “WILL COMPLY” or “AGREED” to each point in this section. In addition, many items in this RFP require detailed and specific responses to provide the requested information. Failure to provide the information requested will result in the Vendor receiving a lower score for that item, or, at the State’s sole discretion, being subject to disqualification.
- 1.3 “ACKNOWLEDGED” should be used when no vendor response or vendor compliance is required. “ACKNOWLEDGED” simply means the vendor is confirming to the State that he read the statement. This is commonly used in the RFP sections where the agency’s current operating environment is described or where general information is being given about the project.
- 1.4 “WILL COMPLY” or “AGREED” are used interchangeably to indicate that the vendor will adhere to the requirement. These terms are used to respond to statements that specify that a vendor or vendor’s proposed solution must comply with a specific item or must perform a certain task.
- 1.5 If the Vendor cannot respond with “ACKNOWLEDGED,” “WILL COMPLY,” or “AGREED,” then the Vendor must respond with “EXCEPTION.” (See Section V, for additional instructions regarding Vendor exceptions.)
- 1.6 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
- 1.7 In addition to the above, Vendor must provide explicit details as to the manner and degree to which the proposal meets or exceeds each specification.

### **2. General Overview and Background**

- 2.1 The University of Mississippi Medical Center (UMMC) is seeking a contractor to provide a credentialing/privileging system to be utilized by the hospital to streamline the credentialing process by providing paperless applications, automating the primary source verification process, and providing a centralized database for the purpose of collecting and sharing information about physician qualifications and competency in a variety of



formats including online for internal and external audiences and reporting purposes. This system will also automate the peer review and the credential/privilege renewal process in a manner that meets legal and professional guidelines.

- 2.2 The credentialing/privileging system will be used to verify physician credentials, report staff demographics, track expiring credentials, notate derogatory items, and automate correspondence related to credential/privilege information. The credentialing/privileging system must interface with other hospital systems as well as state and national boards and agencies as described in the requirements defined in Attachment B.

### 3. Procurement Project Schedule

Task	Date
First Advertisement Date for RFP	04/16/2013
Second Advertisement Date for RFP	04/23/2013
Deadline for Vendor's Written Questions	3:00 p.m. Central Time on 05/06/2013
Deadline for Questions Answered and Posted to ITS Web Site	05/15/2013
Open Proposals	3:00 p.m. Central Time on 05/23/2013
Evaluation of Proposals Begins	05/24/2013
ITS Board Presentation	06/20/13
Contract Negotiation Begins	TBD

### 4. Statement of Understanding

- 4.1 Vendors may request additional information or clarifications to this RFP using the following procedure:
- 4.1.1 Vendors must clearly identify the specified paragraph(s) in the RFP that is in question.
- 4.1.2 Vendor must deliver a written document to Sandra Randall at ITS by May 6, 2013 at 3:00 p.m. Central Time. This document may be delivered by hand, mail, email, or fax. Address information is given on page one of this RFP. The fax number is (601) 713-6380. **ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF QUESTION DOCUMENTS.** It is solely the responsibility of the vendor that the clarification document reaches ITS on time. Vendors may contact Sandra Randall to verify the receipt of their document. Documents received after the deadline will be rejected.

- 4.2 All questions will be compiled and answered, and a written document containing all questions submitted and corresponding answers will be posted on the **ITS** web site by close of business on May 15, 2013.
- 4.3 ITS acknowledges that the specifications within this RFP are not exhaustive. Rather, they reflect the known requirements that must be met by the proposed system. Vendors must specify, here, what additional components may be needed and are proposed in order to complete each configuration.
- 4.4 Two standard contracts are attached to this RFP in Attachment A as follows:
  - 4.4.1 Software Turnkey Agreement - applies if UMMC hosts the application; and
  - 4.4.2 Software License and Application Service Provider Agreement - applies if the Vendor hosts the application.

## **5. Mandatory Requirements**

Proposals not meeting the following requirements will be eliminated from further consideration:

- 5.1 The product must have the ability to instantaneously export queried information to web portals in a view-only format used for primary source verification of provider privileges, both internally and externally, based on templates developed by UMMC.
- 5.2 The product must be able to provide the following call center services:
  - 5.2.1 Log calls and add contacts (callers) capturing the following information: Caller, patient (if different from the caller), and user defined fields (at least 20) that allow for drop-down selection of call reasons/features;
  - 5.2.2 The product must be able to log patient consultations;
  - 5.2.3 The product must be able to activate/deactivate providers at a specified time daily based on privileging/credentialing information; and
  - 5.2.4 The product must have the ability to generate reports based on patient call information.
- 5.3 The product must be able to use HL7 (Health Level Seven) data definitions and formats to exchange data (both import and export).

## 6. General Requirements

- 6.1 UMMC desires that the Vendor provides services consisting of a hosting platform, software, installation services, technical support, maintenance and training for the implementation of the Physician Credentialing/Privileging System. Vendor must describe in detail how he intends to provide hosting, bandwidth, security, backup, and recovery from the Vendor's ASP site in response to the hosting requirements in Attachment B.
- 6.2 UMMC reserves the right to purchase or utilize its own hardware if it is considered to be more economically feasible. For this solution to be considered, the Vendor must propose, as an option, the cost and system configuration for UMMC to host the solution with all of the hardware and software located at UMMC. Vendor must include this optional cost in Section VIII, *Cost Information Submission*.
- 6.3 The Vendor must furnish:
  - 6.3.1 Minimum PC system and browser technical specifications necessary to access the system as proposed; and
  - 6.3.2 Recommended PC system and browser technical specifications necessary to access the system as proposed.
- 6.4 The Vendor must identify the maximum number of concurrent users and describe the maximum system load that the standard system will support.
- 6.5 The Vendor must agree that, notwithstanding anything to the contrary in this agreement, UMMC shall have the right to reproduce any and all physical documentation supplied under the terms of the agreement resulting from this RFP, provided, however, that such reproduction shall be for the sole use of the UMMC and shall be subject to the same restrictions or use and disclosure as are contained elsewhere in the agreement resulting from this RFP.
- 6.6 The system should comply with all federal and state laws, rules and regulations including confidentiality of appropriate information and HIPAA compliance.
- 6.7 The Vendor must provide redundant Internet connections if the servers are housed at the Vendor's site.
- 6.8 The Vendor must complete daily backups of the system and indicate how often these backups are tested each year.
- 6.9 The Vendor shall propose and adhere to a mutually agreed upon disaster recovery plan, all at Vendor's expense.

- 6.10 The Vendor must ensure that upon termination or expiration of this Agreement that transition of the site from the Vendor to UMMC or to a successor host will be accomplished at no expense to UMMC, and with minimal interruption of the site's accessibility and insignificant changes in the site's appearance and functionality. Vendor must fully describe this process.
- 6.11 The Vendor must provide UMMC access to all of the technical information concerning operation of the site, including but not limited to, server specifications, Internet connection information, personnel requirements, ongoing support required and software implementations.

**7. Technical/Functional, Support, and Vendor Qualification Requirements**

The requirements for this project are incorporated into a table included in this RFP as Attachment B, System Requirements. Vendor must refer to that Attachment and formulate responses to that portion of the proposal as directed.

**8. Cost Proposal**

- 8.1 The Vendor must propose a fixed amount for all services requested in this RFP including equipment, software, professional services, implementation, equipment maintenance, software support, training, and any travel, subsistence or lodging costs. A fixed price proposal must be submitted using the table in Section VIII, *Cost Information Submission*.
- 8.2 The Vendor must include and complete all parts of the cost proposal, Section VIII, *Cost Information Submission*, in a clear and accurate manner. The Vendor must summarize all costs in Section VIII and fully and explicitly itemize them on a separate document as supporting documentation of how they were derived. These costs must include all initial, one-time purchase prices, as well as, all recurring costs for ongoing maintenance, licensing, or other items.
- 8.3 The Vendor must present software costs on a per user basis.

**9. Change Orders**

- 9.1 Vendor must submit, in Section VIII, *Cost Information Submission*, Table 3, a fully-loaded rate to include any travel or per diem costs, and a base rate that does not include travel or per diem costs. The fully-loaded rate would be used only when travel is required. These rates shall remain in effect for the duration of the contract.
- 9.2 Vendor staff related travel expenses as required and approved by the State for a Change Order must be invoiced at the fully-loaded rate (or less) since travel

expenses will not be reimbursed. Change Order hours for any Vendor staff where travel is not required must be billed at the base rate.

## 10. Scoring Methodology

10.1 An Evaluation Team composed of UMMC and **ITS** staff will review and evaluate all proposals. All information provided by the Vendors, as well as any other information available to evaluation team, will be used to evaluate the proposals.

10.1.1 Each category included in the scoring mechanism is assigned a weight between one and 100.

10.1.2 The sum of all categories, other than Value-Add, equals 100 possible points.

10.1.3 Value-Add is defined as product(s) or service(s), exclusive of the stated functional and technical requirements and provided to the State at no additional charge, which, in the sole judgment of the State, provide both benefit and value to the State significant enough to distinguish the proposal and merit the award of additional points. A Value-Add rating between 0 and 5 may be assigned based on the assessment of the evaluation team. These points will be added to the total score.

10.1.4 For the evaluation of this RFP, the Evaluation Team will use the following categories and possible points:

Category	Possible Points
Non-Cost Categories:	
Technical, Interface, Security, and System Availability	35
Implementation/Installation, Acceptance Testing, Training	10
Warranty and Maintenance	10
Project Management, Vendor Qualifications	10
Total Non-Cost Points	65
Cost	35
Total Base Points	100
Value Add	5
<b>Maximum Possible Points</b>	<b>105</b>

10.2 The evaluation will be conducted in four stages as follows:

10.2.1 Stage 1 – Selection of Responsive/Valid Proposals – Each proposal will be reviewed to determine if it is sufficiently responsive to the RFP requirements to permit a complete evaluation. A responsive proposal must comply with the instructions stated in this RFP with regard to content, organization/format, Vendor experience, number of copies, bond requirement, timely delivery, and must be responsive to all mandatory requirements. No evaluation points will be awarded in this stage. Failure to submit a complete proposal may result in rejection of the proposal.

10.2.2 Stage 2 – Non-cost Evaluation (all requirements excluding cost)

10.2.2.1 Non-cost categories and possible point values are as follows:

<b>Non-Cost Categories</b>	<b>Possible Points</b>
Technical, Interface, Security, and System Availability	35
Implementation/Installation, Acceptance Testing, Training	10
Warranty and Maintenance	10
Project Management, Vendor Qualifications	10
<b>Maximum Possible Points</b>	<b>65</b>

10.2.2.2 Proposals meeting fewer than 80% of the requirements in the non-cost categories may be eliminated from further consideration.

10.2.2.3 ITS scores the non-cost categories on a 10-point scale, with 9 points for meeting the requirement. The ‘Meets Specs’ score for each category is 90% of the total points allocated for that category. For example, the ‘Warranty and Maintenance’ category was allocated 10 points; a proposal that fully met all requirements in that section would have scored 9 points. The additional 10% is used for a proposal that exceeds the requirement for an item in a way that provides additional benefits to the state.

10.2.3 Stage 3 – Cost Evaluation

10.2.3.1 Points will be assigned using the following formula:

$$(1-((B-A)/A))*n$$

Where:

A = Total lifecycle cost of lowest valid proposal

B = Total lifecycle cost of proposal being scored

n = Maximum number of points allocated to cost for acquisition

10.2.3.2 Cost categories and maximum point values are as follows:

<b>Cost Category</b>	<b>Possible Points</b>
Lifecycle Cost	35
<b>Maximum Possible Points</b>	<b>35</b>

10.2.4 Stage 4 – Selection of the successful Vendor

Final Quantitative Evaluation - Following any requested presentation and demonstrations using the guidelines in 10.3 and 10.4 below, the Evaluation Team will re-evaluate any technical/functional scores as necessary. The technical/functional and cost scores will then be combined to determine the Vendor's final score.

### 10.3 On-site Demonstrations and Interviews

10.3.1 At the discretion of the State, evaluators may request interviews, on-site presentations, demonstrations or discussions with any and all Vendors for the purpose of system overview and/or clarification or amplification of information presented in any part of the proposal.

10.3.2 If requested, Vendors must be prepared to make on-site demonstrations of system functionality and/or proposal clarifications to the evaluation team and its affiliates within seven calendar days of notification. Each presentation must be made by the project manager being proposed by the Vendor to oversee implementation of this project.

10.3.3 Proposed key team members must be present at the on-site demonstration. The evaluation team reserves the right to interview the proposed key team members during this onsite visit.

10.3.4 Although on-site demonstrations may be requested, the demonstration will not be allowed in lieu of a written proposal.

#### 10.4 Site Visits

At the State's option, Vendors that remain within a competitive range must be prepared to provide a reference site within seven calendar days of notification. If possible, the reference site should be in the Southeastern region of the United States. Vendor must list potential reference sites in the proposal.



## SECTION VIII COST INFORMATION SUBMISSION

Vendors must propose a summary of all applicable project costs in the matrix that follows. The matrix must be supplemented by a cost itemization fully detailing the basis of each cost category. The level of detail must address the following elements as applicable: item, description, quantity, retail, discount, extension, and deliverable. Any cost not listed in this section may result in the Vendor providing those products or services at no charge to the State or face disqualification.

**Table 1**

Category	Item Description	Quantity or Frequency of Cost (per month, one time, etc.)	Extended Cost
1. Implementation/setup including minor customizations			
2. Training			
3. Professional Services (Custom Enhancements)			
4. Professional Services (Other – please specify)			
5. Software			
6. Other (please specify)			
<b>Total Initial Cost (items 1-6)</b>			
Hosting			
Software Support			
Other (please specify)			
<b>Total Annual On-going Cost</b>			

**Table 2 – Optional Cost**

Item Description	Quantity/Frequency	Cost	Extended
<b>Total</b>			

**Table 3 – Change Order Rates**

Item Description	Base Rate	Fully-Loaded Rate

## **SECTION IX REFERENCES**

Please return the following Reference Forms, and if applicable, Subcontractor Reference Forms.

### **1. References**

- 1.1 The Vendor must provide at least 3 references consisting of Vendor accounts that the State may contact. Required information includes customer contact name, address, telephone number, email address, and engagement starting and ending dates. Forms for providing reference information are included later in this RFP section. The Vendor must make arrangements in advance with the account references so that they may be contacted at the Project team's convenience without further clearance or Vendor intercession.
- 1.2 Any of the following may subject the Vendor's proposal to being rated unfavorably relative to these criteria or removed from further consideration, at the State's sole discretion:
  - 1.2.1 Failure to provide reference information in the manner described;
  - 1.2.2 Inability of the State to substantiate minimum experience or other requirements from the references provided;
  - 1.2.3 Non-responsiveness of references to the State's attempts to contact them; or
  - 1.2.4 Unfavorable references that raise serious concerns about material risks to the State in contracting with the Vendor for the proposed products or services.
- 1.3 References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:
  - 1.3.1 The reference installation must be for a project similar in scope and size to the project for which this RFP is issued;
  - 1.3.2 The reference installation must have been operational for at least six (6) months.
- 1.4 The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, including the procuring agency and/or other agencies or institutions of the State, even if that customer is not included in the Vendor's list of references, and to utilize such information in the evaluation of the Vendor's proposal.

- 1.5 Unless otherwise indicated in the Scoring Methodology in Section VII, reference information available to the State will be used as follows:
  - 1.5.1 As documentation supporting mandatory experience requirements for companies, products, and/or individuals, as required in this RFP;
  - 1.5.2 To confirm the capabilities and quality of a Vendor, product, or individual for the proposal deemed lowest and best, prior to finalizing the award.
- 1.6 The State reserves the right to forego reference checking when, at the State's sole discretion, the evaluation team determines that the capabilities of the recommended Vendor are known to the State.

## **2. Subcontractors**

The Vendor's proposal must identify any subcontractor that will be used and include the name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and three (3) references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this section.

Unless otherwise noted, the requirements found in the References section may be met through a combination of Vendor and subcontractor references and experience. Vendor's proposal should clearly indicate any mandatory experience requirements met by subcontractors. NOTE: The State reserves the right to eliminate from further consideration proposals in which the prime Vendor does not, in the State's sole opinion, provide substantive value or investment in the total solution proposed. (i.e. the State does not typically accept proposals in which the prime Vendor is only a brokering agent.)

## **REFERENCE FORM**

### **Complete 3 Reference Forms.**

Contact Name:

Company Name:

Address:

Phone #:

E-Mail:

Project Start Date:

Project End Date:

Description of product/services/project, including start and end dates:

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## **SUBCONTRACTOR REFERENCE FORM**

**Complete a separate form for each subcontractor proposed.**

Contact Name:  
Company Name:  
Address:  
Phone #:  
E-Mail:

Scope of services/products to be provided by subcontractor:

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**Complete three (3) Reference Forms for each Subcontractor.**

Contact Name:  
Company Name:  
Address:  
Phone #:  
E-Mail:  
Description of product/services/project, including start and end dates:

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## **ATTACHMENT A STANDARD CONTRACTS**

A properly executed contract is a requirement of this RFP. After an award has been made, it will be necessary for the winning Vendor to execute a contract with **ITS**. The inclusion of these contracts does not preclude **ITS** from, at its sole discretion, negotiating additional terms and conditions with the selected Vendor(s) specific to the projects covered by this RFP.

If Vendor cannot comply with any term or condition of these Standard Contracts, Vendor must list and explain each specific exception on the *Proposal Exception Summary Form* included in Section V.

**PROJECT NUMBER 39853**  
**SOFTWARE TURNKEY AGREEMENT**  
**BETWEEN**  
**INSERT VENDOR NAME**  
**AND**  
**MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES**  
**AS CONTRACTING AGENT FOR THE**  
**UNIVERSITY OF MISSISSIPPI MEDICAL CENTER**

This Software Turnkey Agreement (hereinafter referred to as "Agreement") is entered into by and between **INSERT VENDOR NAME**, a **INSERT STATE OF INCORPORATION** corporation having its principal place of business at **INSERT VENDOR STREET ADDRESS** (hereinafter referred to as "Seller"), and Mississippi Department of Information Technology Services having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as "ITS"), as contracting agent for the University of Mississippi Medical Center located at 2500 North State Street, Jackson, Mississippi 39216 (hereinafter referred to as "Purchaser"). ITS and Purchaser are sometimes collectively referred to herein as "State."

**WHEREAS**, Purchaser, pursuant to Request for Proposals ("RFP") Number 3701, requested proposals for the acquisition of certain software, installation and conversion services, and technical support (collectively "Turnkey Operation") necessary for the implementation of a Physician Credentialing/Privileging System; and

**WHEREAS**, Seller was the successful proposer in an open, fair, and competitive procurement process to provide the system and services described above;

**NOW, THEREFORE**, in consideration of the mutual understandings, promises, consideration, and agreements set forth, the parties hereto agree as follows:

**ARTICLE 1 PERIOD OF PERFORMANCE**

**1.1** This Agreement will become effective on the date it is signed by all parties and will continue in effect until all tasks required herein, including any post warranty maintenance/support specified in Exhibit A, have been completed. Seller agrees to complete all tasks required under this Agreement, with the exception of warranty service and post warranty maintenance, on or before March 31, 2013, or within such other period as may be agreed to by the parties.

**1.2** This Agreement will become a binding obligation on the State only upon the issuance of a valid purchase order by the Purchaser following contract execution and the issuance by ITS of the CP-1 Acquisition Approval Document.

**ARTICLE 2 TURNKEY OPERATION AND INSTALLATION**

**2.1** The Seller agrees to provide Purchaser with a turnkey system consisting of software, installation and conversion services, technical support, and training for the implementation of a



Physician Credentialing/Privileging System as specified in RFP No. 3722. Seller agrees to facilitate the integration of the hardware and software for the particular purpose set forth in RFP No. 3722. Seller further agrees that the system, as set forth in RFP No. 3722 and Seller's Proposal in response thereto, shall operate efficiently and optimally in light of industry standards and as further specified in RFP No. 3722 and Seller's Proposal in response thereto. RFP No. 3722 and Seller's Proposal as accepted by the State in response thereto are incorporated herein by reference.

**2.2** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that: (a) Seller is solely responsible for all products and services being provided in this project; (b) Seller is responsible for the fulfillment of this project; and (c) Seller represents all contractors, third parties, and/or subcontractors Seller has assembled for this project. The Purchaser is required to negotiate only with Seller, as Seller's commitments, as specified in this Agreement, are binding on all proposed contractors, third parties, and subcontractors.

### **ARTICLE 3 PROCUREMENT OF SOFTWARE AND PURCHASE ORDERS**

Subject to the terms and conditions set forth herein, Seller agrees to provide, at the location specified by Purchaser, and Purchaser agrees to buy as needed the software and services listed in the attached Exhibit A, which is incorporated herein, and at the purchase price set forth therein. Purchaser shall submit a purchase order signed by a representative of Purchaser itemizing the items to be purchased. The purchase order shall be subject to the terms and conditions of this Agreement. The parties agree that Purchaser reserves the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by Purchaser. Seller guarantees pricing for a period of six (6) months from the effective date of this Agreement. In the event there is a national price decrease of the products specified in Seller's Proposal during this time, Seller agrees to extend the new, lower pricing to Purchaser.

### **ARTICLE 4 DELIVERY, INSTALLATION, AND RISK OF LOSS**

**4.1** Seller shall deliver the software to the location specified by Purchaser and pursuant to the delivery schedule set forth by Purchaser.

**4.2** Seller shall complete installation of the software pursuant to the requirements set forth in RFP No. 3722 and Article 5 herein. Seller acknowledges that installation of the system shall be accomplished with minimal interruption of Purchaser's normal day-to-day operations.

**4.3** Seller shall assume and shall bear the entire risk of loss and damage to the software from any cause whatsoever while in transit and at all times throughout its possession thereof.

**4.4** Seller shall be responsible for replacing, restoring, or bringing to at least original condition any damage to floors, ceilings, walls, furniture, grounds, pavements, sidewalks, and the like caused by its personnel and operations during the installation, subject to final approval of ITS. The repairs will be done only by technicians skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality.

## **ARTICLE 5 SCHEDULE AND ACCEPTANCE**

**5.1** Seller warrants that all software shall be properly delivered, installed, and integrated for acceptance testing within the scheduling deadlines set forth by Purchaser, as the site is deemed ready for installation. Seller shall provide Purchaser with an installation schedule identifying the date, time, and location within the scheduling deadlines set forth in RFP No. 3722, or as may be agreed to by the parties.

**5.2** During the project initiation, Seller and Purchaser will develop a mutually agreed upon project plan including the division of responsibility between Purchaser's staff and Seller's staff. It is understood by the parties that the project work plan must be in place prior to any other work being performed. Once this mutually agreed upon project plan, which will identify specific time frames and deliverable target dates for this project, has been developed, it will be incorporated into and made a part of this Agreement. The dates in the project plan will define the agreed upon period of performance. The parties acknowledge that the project plan will evolve and change from time to time, upon the mutual written agreement of both parties. The parties agree that the deliverables and schedule set forth in the latest version of the project plan will take precedence over any prior plans.

**5.3** Seller shall provide all documentation for the software being tested before acceptance testing will begin. Purchaser shall have ten (10) business days to review each deliverable and to either notify Seller of acceptance or to provide Seller a detailed list of deficiencies that must be remedied. In the event the Purchaser notifies the Seller of deficiencies, the Seller, at Seller's sole expense, shall correct such deficiencies within ten (10) business days, unless the Purchaser consents in writing to a longer period of time.

**5.4** Upon notification by Seller that the turnkey system has been fully implemented and is ready for final system acceptance testing, Purchaser shall have thirty (30) calendar days to evaluate and test the system to confirm that it performs without any defects and performs pursuant to the specifications set forth in RFP No. 3722 and the Seller's Proposal in response thereto. Seller shall participate, as agreed upon by both parties, in the acceptance testing of the system by providing technical staff at Purchaser's location to provide assistance in demonstrating all functions of the system. The Purchaser's official representative must sign off on each application to ensure that the applications meet the functional and technical requirements. In the event that one (1) or more applications supplied by Seller are not accepted, the Seller shall correct the deficiencies or provide, at its own expense, whatever software that may be required to meet the acceptance criteria within ten (10) business days or a mutually agreed upon time period. In the event the system fails to perform to Purchaser's satisfaction, Purchaser shall immediately notify Seller. Seller, at Seller's sole expense, shall correct defects identified by Purchaser within ten (10) business days, or such other period as the parties may agree upon. The thirty (30) calendar day testing period will be extended by system down-time. In the event Seller is unable to repair or replace the defective software, the Purchaser reserves the right to return defective software to Seller at Seller's expense and to cancel this Agreement.

## **ARTICLE 6 SOFTWARE LICENSE AND TERMS**

**6.1** Seller shall furnish the software to Purchaser, as set forth in purchase orders submitted and executed by Purchaser, and shall acquire the right to license the software to Purchaser. For purposes of this Article, the term "Purchaser" means the University of Mississippi Medical Center, its employees, and any third party consultants or outsourcers engaged by Purchaser who have a need to know and who shall be bound by the terms and conditions of this license and Agreement.

**6.2** Seller accepts sole responsibility for: (a) Purchaser's system configuration, design, and requirements; (b) the selection of the software to achieve Purchaser's intended results; (c) the results obtained from the software; and (d) modifications, changes, or alterations to the software provided by Seller.

**6.3** Seller understands and agrees that Purchaser shall have: (a) a non-exclusive, non-transferable, enterprise-wide unlimited, and perpetual license for the software listed in Exhibit A; (b) the right to use and customize the software products and the related documentation for Purchaser's business operations and in accordance with the terms and conditions of this Agreement; (c) unlimited use by licensed users of the software products acquired for Purchaser's operations; (d) use of such software products with a backup platform system, should it be deemed necessary by Purchaser; (e) the right to copy such software for safekeeping, backup, and disaster recovery purposes; (f) the right to combine the software with other programs and modules, and the right to create interfaces to other programs; and (g) the right to reproduce any and all physical documentation supplied under the terms of this Agreement.

**6.4** Purchaser agrees that except as noted herein, it will not otherwise copy, translate, modify, adapt, decompile, disassemble, or reverse engineer any of the software without the prior written consent of Seller. All title and proprietary rights, whether tangible or intangible, including but not limited to copyright, trademark, and trade secret rights, in and to the software are retained by the Seller or the third party software manufacturer as applicable. Purchaser agrees to reproduce and include the copyright, trademark, and other proprietary rights notices on any copies made of the software and documentation.

## **ARTICLE 7 CONVERSION AND TRAINING**

Seller shall, for the fees specified in the attached Exhibit A, provide the conversion activities as well as the training specified in RFP No. 3722 and Seller's Proposal, as accepted by Purchaser, in response thereto. Seller and Purchaser shall mutually agree on the time for the training and an outline of the training to be provided. Seller specifically understands and agrees that Purchaser will not accept the system until Seller completes the conversion and training requirements. Seller agrees to provide, upon delivery, all user documentation and technical manuals needed to fully acquaint the user with operation of the software.

## **ARTICLE 8 CONSIDERATION AND METHOD OF PAYMENT**

**8.1** Upon notification from Purchaser of its final acceptance of the system, Seller shall submit an invoice for payment of the system and for services rendered at the prices set forth in Exhibit A. In no event will the total compensation to be paid hereunder for all products, services, travel,

performances and expenses under this Agreement exceed the specified sum of **\$INSERT AMOUNT**, unless prior written authorization from ITS has been obtained. Seller shall certify that the billing is true and correct. Seller shall submit invoices and supporting documentation to Purchaser electronically during the term of this Agreement using the processes and procedures identified by the State. Purchaser agrees to pay Seller in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the State within forty-five (45) days of receipt of the invoice. Seller understands and agrees that Purchaser is exempt from the payment of taxes. All payments should be made in United States currency. Payments by state agencies using the Statewide Automated Accounting System (“SAAS”) shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Seller’s choice. No payment, including final payment, shall be construed as acceptance of defective products or incomplete work, and the Seller shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled “Entire Agreement.”

**8.2** Acceptance by the Seller of the last payment from the Purchaser shall operate as a release of all claims against the State by the Seller and any subcontractors or other persons supplying labor or materials used in the performance of the work under this Agreement.

## **ARTICLE 9 WARRANTIES**

**9.1** Seller represents and warrants that all software and services provided by Seller shall meet or exceed the minimum specifications set forth in RFP No. 3722 and Seller’s Proposal in response thereto.

**9.2** Seller represents and warrants that Seller has the right to license the software provided under this Agreement.

**9.3** Seller represents and warrants that all software furnished will be free from material defects for a period of one (1) year after final acceptance of the complete system and will provide Purchaser complete functionality necessary for the operation of the system as stated in RFP No. 3722 and the Seller’s Proposal in response thereto. This warranty shall cover all components of the system, including but not limited to all programs, screens, reports, subroutines, utilities, file structures, documentation, interfaces, or other items provided by the Seller. This warranty will apply to the base package, plus any customized programs, screens, reports, subroutines, interfaces, utilities, file structures, documentation, or other items proposed and delivered by the Seller specifically for this project. The Seller shall give immediate high priority attention to any mission critical corrections that are needed. If the software does not function accordingly, Seller shall, within five (5) working days and at no cost to Purchaser, correct the defects identified or replace the software with software that is compliant with this warranty. In the event Seller cannot repair or replace the software, Seller shall at the State’s election, either refund the fees paid for the software and for any services that directly relate to the defective software, or secure alternate software acceptable to the Purchaser which will insure functionality of the system.

**9.4** Seller represents and warrants that the turnkey system is fit for the particular purpose set forth in this Agreement and RFP No. 3722, with regard to Purchaser's foreseeable or projected needs.

**9.5** Seller represents and warrants that it has and will obtain and pass through to Purchaser any and all warranties obtained or available from the licensor of software supplied to Seller.

**9.6** Seller represents and warrants that all work performed hereunder, including but not limited to consulting, conversion, training, technical support, and maintenance, shall be performed by competent personnel, shall be of professional quality consistent with generally accepted industry standards for the performance of such services, and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Seller shall, for a period of ninety (90) days from the performance of service, perform the services again at no cost to the Purchaser, or if the Seller is unable to perform the services as warranted, the Seller shall reimburse the Purchaser the fees paid to the Seller for the unsatisfactory services.

**9.7** Seller represents and warrants that there is no disabling code or a lockup program or device embedded in the software provided to Purchaser. Seller further agrees that it will not, under any circumstances, including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Purchaser's use of the software and/or which would restrict Purchaser from accessing its data files or in any way interfere with the transaction of Purchaser's business. For any breach of this warranty, Seller, at its expense, shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of such disabling code or a lockup program or device.

**9.8** Seller represents and warrants that the software as delivered to Purchaser does not contain a computer virus. For any breach of this warranty, Seller, at its expense, shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of any virus and shall be responsible for repairing, at Seller's expense, any and all damage done by the virus to Purchaser's site.

**9.9** Seller represents and warrants that, upon completion of the project, the Seller and all subcontractors shall convey to Purchaser copies of all interim reports, data collection forms, and any working papers that support the final acceptance of the system.

**9.10** Seller represents and warrants that it presently has and will continue to maintain, at its own expense, throughout the term of this Agreement, valid licenses for all software, trademarks, service marks, patents and copyrighted material and any other proprietary information of a third party that it will deploy in support of all products Seller uses in the performance of this Agreement. Seller further represents and warrants that upon Purchaser's request, Seller shall pass through such licenses to Purchaser at no cost to Purchaser. In the event the licenses are passed through to Purchaser, such licenses shall name the Purchaser as the license holder of record and such licenses shall be established in such a manner so as to survive the termination/expiration of this Agreement. For any breach of the preceding warranty, Seller at its own expense shall within

five (5) business days after receipt of notification of the breach, secure and/or pass through, as applicable, the necessary licenses. Failure of the Seller to secure and/or pass through such licenses to Purchaser shall be considered a material breach of this Agreement and the Purchaser may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

**9.11** If applicable under the given circumstances, Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Seller agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security where required, to provide a copy of each such verification to the State. Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Seller understands and agrees that any breach of these warranties may subject Seller to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Seller by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

**9.12** Seller represents and warrants that the system provided pursuant to this Agreement will pass both internal security audits and independent security audits. For any breach of the preceding warranty at any time during which the system is covered by warranty, maintenance and/or support, Seller shall, at its own expense and at no cost to Purchaser, remediate any defect, anomaly or security vulnerability in the system by repairing and/or replacing any and all components of the system necessary in order for the system to be secure.

**9.13** Seller represents and warrants that no official or employee of Purchaser or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Agreement. The Seller warrants that it has removed any material conflict of interest prior to the signing of this Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Agreement. The Seller also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

**9.14** The Seller represents and warrants that no elected or appointed officer or other employee

of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Seller, terminate the right of the Seller to proceed under this Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Seller to any officer or employee of the State of Mississippi with a view toward securing this Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Seller as it would pursue in the event of a breach of contract by the Seller, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

#### **ARTICLE 10 INFRINGEMENT INDEMNIFICATION**

Seller represents and warrants that neither the software, its elements, nor the use thereof violates or infringes on any copyright, patent, trademark, servicemark, trade secret, or other proprietary right of any person or entity. Seller, at its own expense, shall defend or settle any and all infringement actions filed against Seller or Purchaser which involve the software provided under this Agreement and shall pay all settlements, as well as all costs, attorney fees, damages, and judgment finally awarded against Purchaser. If the continued use of the products for the purpose intended is threatened to be enjoined or is enjoined by any court of competent jurisdiction, Seller shall, at its expense: (a) first procure for Purchaser the right to continue using such products, or upon failing to procure such right; (b) modify or replace them with non-infringing products while maintaining substantially similar software functionality or data/informational content, or upon failing to secure either such right; (c) refund to Purchaser the software license fees previously paid by Purchaser for the products Purchaser may no longer use. Said refund shall be paid within ten (10) working days of notice to Purchaser to discontinue said use.

#### **ARTICLE 11 SOFTWARE SUPPORT**

**11.1** Prior to expiration of the warranty period, Seller shall notify Purchaser in writing of the impending warranty expiration, and Purchaser shall in turn notify Seller of its decision to either obtain software support or to forgo it. Upon notification of intent to obtain software support, Seller shall provide Purchaser, for the annual fee specified in the attached Exhibit A, the software support services as herein described.

**11.2** Seller shall provide, for the periods set forth in Exhibit A, software support services as specified in RFP No. 3722 and Seller's Proposal, as accepted by Purchaser, in response thereto, with said support to include but not be limited to the following: (a) upon notification of software errors, Seller shall provide all remedial support and assistance needed to correct the errors which affect the operation of the software; (b) the provision of regular updates, new releases, and enhancements as they are released, but no less than one (1) annually; (c) unlimited toll-free technical telephone support in the operation of the software system Monday through Friday from

8:00 A.M. to 5:00 P.M. (Central Time), with a guaranteed one (1) hour telephone response time; priority placement in the support queue shall be given to all system locking situations or problems claimed by Purchaser to be a mission critical process; and (d) on-site support in the operation of the software products if reasonably convenient or necessary in the opinion of the Seller. It is further understood that in the event the software product lines are discontinued, Seller shall be responsible for supporting the last software release implemented by the Purchaser for a minimum of five (5) years thereafter, with the same level of support as described in this Article. Should Seller migrate away from the database currently required for the software installed for Purchaser to a different database, Seller shall provide updated product and new database licensing to Purchaser at no cost to Purchaser.

**11.3** Sixty (60) days prior to expiration of the initial software support period or any renewal term thereof, Seller shall notify Purchaser in writing of the impending expiration, and Purchaser shall have thirty (30) days in which to notify Seller of its decision to either renew or cancel any further software support. In no event shall the cost for software support increase by more than five percent (5%) per year.

## **ARTICLE 12 EMPLOYMENT STATUS**

**12.1** Seller shall, during the entire term of this Agreement, be construed to be an independent contractor. Nothing in this Agreement is intended to nor shall it be construed to create an employer-employee relationship or a joint venture relationship.

**12.2** Seller represents that it is qualified to perform the duties to be performed under this Agreement and that it has or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of Purchaser. Seller shall pay, when due, all salaries and wages of its employees, and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation, and any other withholdings that may be required. Neither Seller nor employees of Seller are entitled to state retirement or leave benefits.

**12.3** Any person assigned by Seller to perform the services hereunder shall be the employee of Seller, who shall have the sole right to hire and discharge its employee. Purchaser may, however, direct Seller to replace any of its employees under this Agreement. If Seller is notified within the first eight (8) hours of assignment that the person is unsatisfactory, Seller will not charge Purchaser for those hours.

**12.4** It is further understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder and that any sum due and payable to Seller shall be paid as a gross sum with no withholdings or deductions being made by Purchaser for any purpose from said contract sum.

## **ARTICLE 13 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

Seller will be responsible for the behavior of all its employees and subcontractors while on the premises of any Purchaser location. Any employee or subcontractor acting in a manner



determined by the administration of that location to be detrimental, abusive, or offensive to any of the staff and/or student body will be asked to leave the premises and may be suspended from further work on the premises. All Seller employees and subcontractors who will be working at such locations to install or repair Products shall be covered by Seller's comprehensive general liability insurance policy.

#### **ARTICLE 14 MODIFICATION OR RENEGOTIATION**

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

#### **ARTICLE 15 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

**15.1** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Seller represents all contractors, third parties, and/or subcontractors Seller has assembled for this project. The Purchaser is required to negotiate only with Seller, as Seller's commitments are binding on all proposed contractors, third parties, and subcontractors.

**15.2** Neither party may assign or otherwise transfer this Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Agreement shall be binding upon the parties' respective successors and assigns.

**15.3** Seller must obtain the written approval of Purchaser before subcontracting any portion of this Agreement. No such approval by Purchaser of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Purchaser in addition to the total fixed price agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that Purchaser may deem necessary.

**15.4** Seller represents and warrants that any subcontract agreement Seller enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Purchaser, that the subcontractor acknowledges that no privity of contract exists between the Purchaser and the subcontractor, and that the Seller is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Seller. The Seller shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs, and expenses of every kind and nature whatsoever arising as a result of Seller's failure to pay any and all amounts due by Seller to any subcontractor, materialman, laborer, or the like.

**15.5** All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication, or settlement of any dispute between the Seller and the Purchaser, where such dispute affects the subcontract.

## **ARTICLE 16 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of Purchaser to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement. If the funds anticipated for the fulfillment of this Agreement are not forthcoming or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Purchaser for the payments or performance due under this Agreement, Purchaser shall have the right to immediately terminate this Agreement without damage, penalty, cost, or expense to Purchaser of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Purchaser shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

## **ARTICLE 17 TERMINATION**

Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) by Purchaser, without the assessment of any penalties, upon thirty (30) days written notice to Seller, if Seller becomes the subject of bankruptcy, reorganization, liquidation, or receivership proceedings, whether voluntary or involuntary; (c) by Purchaser, without the assessment of any penalties, for any reason after giving thirty (30) days written notice specifying the effective date thereof to Seller; or (d) by either party in the event of a breach of a material term or provision of this Agreement where such breach continues for thirty (30) days after the breaching party receives written notice from the other party. Upon termination, Purchaser will be entitled to a refund of applicable unexpended prorated annual software support fees/charges, if any. In the event of termination, Seller shall be paid for satisfactory work completed or services rendered by Seller in connection with this Agreement and accepted by Purchaser as of the date of receipt of notification of termination. In no case shall said compensation exceed the total contract price. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

## **ARTICLE 18 GOVERNING LAW**

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi, and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Seller expressly agrees that under no circumstances shall Purchaser or ITS be obligated to pay an attorney's fee, prejudgment interest, or the cost of legal action to Seller. Further, nothing in this Agreement shall affect any statutory rights Purchaser may have that cannot be waived or limited by contract.

## **ARTICLE 19 WAIVER**

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants, and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement. A waiver by the State, to be

effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of the State.

#### **ARTICLE 20 SEVERABILITY**

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that the State's purpose for entering into this Agreement can be fully achieved by the remaining portions of the Agreement that have not been severed.

#### **ARTICLE 21 CAPTIONS**

The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision or section of this Agreement.

#### **ARTICLE 22 HOLD HARMLESS**

To the fullest extent allowed by law, Seller shall indemnify, defend, save and hold harmless, protect, and exonerate Purchaser, ITS and the State, its Board Members, officers, employees, agents, and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs, and expenses of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, attorney fees, and claims for damages arising out of or caused by Seller and/or its partners, principals, agents, employees, or subcontractors in the performance of or failure to perform this Agreement.

#### **ARTICLE 23 THIRD PARTY ACTION NOTIFICATION**

Seller shall notify Purchaser in writing within five (5) business days of Seller filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Seller or Purchaser by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Seller's performance under this Agreement. Failure of the Seller to provide such written notice to Purchaser shall be considered a material breach of this Agreement and the Purchaser may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

#### **ARTICLE 24 AUTHORITY TO CONTRACT**

Seller warrants that it is a validly organized business with valid authority to enter into this Agreement, that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

#### **ARTICLE 25 NOTICE**

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means, provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier

with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Purchaser's address for notice is: Ms. Julie Smith, Chief Operating Officer, University of Mississippi Medical Center, 2500 North State Street, Jackson, Mississippi 39216. The Seller's address for notice is: **INSERT NAME, TITLE, & ADDRESS OF VENDOR PERSON FOR NOTICE**. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

#### **ARTICLE 26 RECORD RETENTION AND ACCESS TO RECORDS**

Seller shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Purchaser, ITS, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Seller's proposals, books, documents, papers and/or records that are pertinent to this Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Seller's office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Seller for three (3) years from the date of receipt of final payment under this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

#### **ARTICLE 27 INSURANCE**

Seller represents that it will maintain workers' compensation insurance as prescribed by law, which shall inure to the benefit of Seller's personnel, as well as comprehensive general liability and employee fidelity bond insurance. Seller will, upon request, furnish Purchaser with a certificate of conformity providing the aforesaid coverage.

#### **ARTICLE 28 DISPUTES**

Any dispute concerning a question of fact under this Agreement, which is not disposed of by agreement of the Seller and Purchaser, shall be decided by the Executive Director of ITS or his/her designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

#### **ARTICLE 29 COMPLIANCE WITH LAWS**

Seller shall comply with and all activities under this Agreement shall be subject to all Purchaser policies and procedures and all applicable federal, state, and local laws, regulations, policies, and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Seller shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin, or disability.

### **ARTICLE 30 CONFLICT OF INTEREST**

Seller shall notify Purchaser of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to Purchaser's satisfaction, Purchaser reserves the right to terminate this Agreement.

### **ARTICLE 31 SOVEREIGN IMMUNITY**

By entering into this Agreement with Seller, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

### **ARTICLE 32 CONFIDENTIAL INFORMATION**

**32.1** Seller shall treat all Purchaser data and information to which it has access by its performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Purchaser. In the event that Seller receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Seller shall promptly inform Purchaser and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules, and regulations. This Article shall survive the termination or completion of this Agreement, shall continue in full force and effect, and shall be binding upon the Seller and its agents, employees, successors, assigns, subcontractors, or any party or entity claiming an interest in this Agreement on behalf of or under the rights of the Seller, following any termination or completion of this Agreement.

**32.2** Seller acknowledges and agrees that UMMC's confidential information includes all medical and other personal or private information of UMMC and any of the customers, insured, patients, physicians, employees or otherwise of UMMC, used or gained by Seller during the performance of this Agreement or in any other manner ("Personal Privacy Information"). Seller's obligations with respect to the Personal Privacy Information are not subject to the exclusions set forth below and are not limited in duration or in any other way.

**32.3** Seller and UMMC shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("the Disclosing Party") which: (a) is or becomes known to the public without fault or breach of the party receiving confidential information of the Disclosing Party ("the Recipient"); (b) is furnished by the Disclosing Party to third parties without restriction on subsequent disclosure; (c) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation; (d) is already in the Recipient's possession without an obligation of confidentiality; or (e) is independently developed by Recipient without reliance on the confidential information.

**32.4** Upon termination of this Agreement or upon demand therefore, each party agrees to promptly return to the other party all confidential information of the other party, including all copies thereof in any form, and to certify to the other party in writing that it has not retained any copies thereof.

**32.5** With the exception of any attached exhibits which are labeled as "confidential", the

parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Seller. ITS will provide third party notice to Seller of any requests received by ITS for any such confidential exhibits so as to allow Seller the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

**32.6 Protected Health Information ('PHI'):** To the extent required, UMMC and Seller intend to comply with the applicable provisions of the HIPAA Privacy Rule and Security Regulations (45 CFR Parts 160, 162 and 164) ("Privacy Rule" and "Security Regulations", individually; or "Privacy and Security Regulations", collectively) and the applicable provisions of the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (the "HITECH Act") as further defined in the Business Associate Addendum, when applicable attached hereto as Exhibit B, or as executed by the parties separate from this Agreement, as the case may be.

#### **ARTICLE 33 EFFECT OF SIGNATURE**

Each person signing this Agreement represents that he or she has read the Agreement in its entirety, understands its terms, is duly authorized to execute this Agreement on behalf of the parties, and agrees to be bound by the terms contained herein. Accordingly, this Agreement shall not be construed or interpreted in favor of or against the State or the Seller on the basis of draftsmanship or preparation hereof.

#### **ARTICLE 34 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS**

All data, electronic or otherwise, collected by Seller and all documents, notes, programs, databases (and all applications thereof), files, reports, studies, and/or other material collected and prepared by Seller in connection with this Agreement, whether completed or in progress, shall be the property of Purchaser upon completion of this Agreement or upon termination of this Agreement. Purchaser hereby reserves all rights to the databases and all applications thereof and to any and all information and/or materials prepared in connection with this Agreement. Seller is prohibited from use of the above described information and/or materials without the express written approval of Purchaser.

#### **ARTICLE 35 NON-SOLICITATION OF EMPLOYEES**

Seller agrees not to employ or to solicit for employment, directly or indirectly, any of the Purchaser's employees until at least one (1) year after the expiration/termination of this Agreement, unless mutually agreed to the contrary in writing by the Purchaser and the Seller, and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government.

#### **ARTICLE 36 ENTIRE AGREEMENT**

**36.1** This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings, and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned or "shrink-wrap" license included in any package, media, or electronic

version of Seller-furnished software, or any “click-wrap” or “browse-wrap” license presented in connection with a purchase via the Internet. The RFP No. 3722 and Seller’s Proposal in response to RFP No. 3722 are hereby incorporated into and made a part of this Agreement.

**36.2** The Agreement made by and between the parties hereto shall consist of and precedence is hereby established by the order of the following:

- A.** This Agreement signed by both parties;
- B.** Any exhibits attached to this Agreement;
- C.** RFP No. 3722 and written addenda; and
- D.** Seller’s Proposal, as accepted by Purchaser, in response to RFP No. 3722.

**36.3** The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Seller. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof, provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document (“A. This Agreement”) and the lowest document is listed last (“D. Seller’s Proposal”).

#### **ARTICLE 37 STATE PROPERTY AND LOCATION OF WORK**

**37.1** Seller shall be responsible for the proper custody of any Purchaser-owned property furnished for Seller’s use in connection with work performed pursuant to this Agreement. Seller shall reimburse the Purchaser for any loss or damage, normal wear and tear excepted.

**37.2** All work provided in connection with this contract will be required to be performed on-site in the Purchaser’s offices in Jackson, Mississippi, unless written approval is received from the State. Seller accepts full responsibility for all problems arising out of a decision to perform off-site work.

#### **ARTICLE 38 SURVIVAL**

Articles 9, 10, 11, 18, 22, 26, 31, 32, 34, 35, and all other articles, which by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

#### **ARTICLE 39 DEBARMENT AND SUSPENSION CERTIFICATION**

Seller certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or

state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and (d) have, within a three (3) year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

#### **ARTICLE 40 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

Seller and Purchaser understand and agree that all products and services provided by Seller under this Agreement must be and remain in compliance with the State of Mississippi's Enterprise Security Policy. The parties understand and agree that the State's Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution. The State reserves the right to introduce a new policy during the term of this Agreement and require the Seller to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

#### **ARTICLE 41 STATUTORY AUTHORITY**

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the Executive Director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software, and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of Purchaser's or Seller's contractual obligations, financial or otherwise, contained within this Agreement.



For the faithful performance of the terms of this Agreement, the parties have caused this Agreement to be executed by their undersigned representatives.

**State of Mississippi, Department of  
Information Technology Services, on  
behalf of University of Mississippi Medical  
Center**

**INSERT VENDOR NAME**

**By: \_\_\_\_\_**  
**Authorized Signature**

**Printed Name: Craig P. Orgeron, Ph.D.**

**Title: Executive Director**

**Date: \_\_\_\_\_**

**By: \_\_\_\_\_**  
**Authorized Signature**

**Printed Name: \_\_\_\_\_**

**Title: \_\_\_\_\_**

**Date: \_\_\_\_\_**

**EXHIBIT A**  
**PAYMENT SCHEDULE**

**EXHIBIT B**  
**BUSINESS ASSOCIATE ADDENDUM**

**ADDENDUM**

Addendum No.: \_\_\_\_\_  
BAA

**BACKGROUND**

**WHEREAS,** The University of Mississippi Medical Center (“UMMC”) and \_\_\_\_\_ (“Vendor”) are parties to that certain Software Turnkey Agreement dated \_\_\_\_\_, \_\_\_\_\_, (the “Agreement”) pursuant to which Vendor provides certain services to UMMC and, in connection with those services, UMMC discloses to Vendor certain information (“Protected Health Information” or “PHI”) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, (as may be now or hereafter amended or modified, “HIPAA”). Vendor acknowledges that as a Business Associate, it is responsible to comply with the HIPAA Security and Privacy regulations, pursuant to Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”), including Sections 164.308, 164.310, 164.312, and 164.316 of title 45 of the Code of Federal Regulations, effective upon the applicable compliance dates set forth in HITECH § 13423 (the “Effective Time”); and

**WHEREAS,** Vendor, as a recipient of protected information from UMMC, is a “Business Associate” as that term is defined in HIPAA and regulations promulgated by the U.S. Department of Health and Human Services to implement certain provisions of HIPAA (herein “HIPAA Regulations”); and

**WHEREAS,** pursuant to the HIPAA regulations, all Business Associates of entities such as UMMC must agree in writing to certain mandatory provisions regarding the Use and Disclosure of individually identifiable health information; and

**WHEREAS,** the purpose of this Addendum is to satisfy the requirements of the HIPAA and HITECH Regulations.

**NOW, THEREFORE,** in consideration of the foregoing and of the desire of UMMC and Vendor to continue providing or receiving services under the Agreement, the parties agree as follows effective as of the Effective Time:

1. Unless otherwise provided in this Addendum, capitalized terms have the same meaning as set forth in the HIPAA Regulations. The term “UMMC” shall further include any affiliate of the UMMC, and “Administrative Safeguards” shall have the same meaning as the term “administrative safeguards” as defined in HIPAA with the exception that it shall apply to the management of the conduct of Vendor’s workforce, rather than UMMC’s workforce, in relation

to the protection of that information.

2. Vendor specifically agrees that it will comply in all material respects with HIPAA when Using or Disclosing PHI received by Vendor from or on behalf of UMMC, including:

- a. not Use or further Disclose PHI other than as permitted or required by the Agreement or as required by law;
- b. use appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by the Agreement;
- c. report to UMMC any use or disclosure of the PHI not provided for by the Agreement of which Vendor becomes aware;
- d. ensure that any agents, including a subcontractor, to whom it provides PHI received from, or created or received by Vendor on behalf of, UMMC agrees in writing to the same restrictions and conditions that apply to the Vendor with respect to such PHI and Vendor will identify all such agents and subcontractors to UMMC;
- e. as required under and within the period of time permitted under 45 C.F.R. §164.524, Vendor shall permit any individual whose PHI is maintained by Vendor to have access to and to obtain a copy of his or her PHI, in the format requested unless it is not readily producible in such format, in which case it shall be produced in hard copy format. The foregoing shall be applicable only if the records of Vendor are considered a Designated Record Set at the time of the request. Vendor may charge a reasonable, cost-based fee as permitted under 45 C.F.R., §164.524 (e)(4);
- f. for so long as PHI of an individual is maintained in a Designated Record Set maintained for UMMC, grant an individual the right to amend his or her PHI and incorporate any amendments to the PHI in accordance with 45 C.F.R. §164.526;
- g. make available the information required to provide an accounting of Disclosure in accordance with 45 C.F.R. §164.528. Such an accounting shall provide:
  - The date of each Disclosure
  - The name and address of the organization or person to whom the Protected Health Information was Disclosed;
  - A brief description of the information Disclosed;
  - Disclosures, other than those made at the request of the Individual, the purpose for which the information was Disclosed or a copy of the request or authorization for Disclosure.

Vendor will provide the above accounting to UMMC as promptly as possible, but in any event no later than thirty (30) days after UMMC's request therefore.

- h. make its internal practices, books, and records relating to the Use and Disclosure of PHI received from, or created or received by Vendor on behalf of UMMC available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining the UMMC's compliance with HIPAA; and
- i. at termination of the Agreement, if feasible, return or destroy all PHI received from, or created or received by Vendor on behalf of UMMC that the Vendor still maintains in any form and retain no copies of such information or, if such return is not feasible, extend the protections of the Agreement to make the return or destruction of the information feasible;
- j. use reasonable commercial efforts to mitigate any harmful effect that is known to Vendor of a Use or Disclosure of PHI by Vendor in violation of the requirements of this Addendum;
- k. implement Administrative Safeguards, Physical Safeguards, and Technical Safeguards (the "Safeguards") in accordance with HIPAA that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of UMMC, as required by 45 C.F.R. Part 164 Subpart C;
- l. ensure that any agent and subcontractor to whom Vendor provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect Electronic PHI;
- m. make its policies, procedures, and documentation required by the Security Rule relating to the Safeguards available to the Secretary of the Department of Health and Human Services for purposes of determining UMMC's compliance with the Security Rule;
- n. request and Use or Disclose only the Minimum Necessary amount of Protected Health Information to serve the intended purposes of the Agreement;
- o. Vendor will not export PHI, nor permit subcontractors or agents to export PHI beyond the borders of the United States of America;
- p. Vendor shall report promptly to UMMC any successful Security Incident of which Vendor becomes aware; provided, however, that with respect to attempted unauthorized access, Use or Disclosure, modification, or destruction of information or interference with system operations in an information system affecting electronic PHI, such report to UMMC will be made available upon request;
- q. upon the Effective Time, if Vendor accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, Uses or Discloses Unsecured Protected Health Information (as defined by HITECH Sec. 4402(h)(1)), it shall, following the discovery of

a breach of such information, promptly notify UMMC of such breach, but in any event no later than fifteen (15) days of discovery. Such notice shall include the identification of each individual whose Unsecured PHI has been or is reasonably believed by Vendor to have been accessed, acquired, or Disclosed during such breach.

3. Vendor, in its capacity as Business Associate to UMMC, shall be permitted to Use and Disclose PHI in a manner that would not violate the requirements of the HIPAA Regulations as follows:

- i. for the proper management and administration of Vendor;
- ii. to carry out the legal responsibilities of Vendor; and
- iii. to provide data aggregation services relating to the health care operations of UMMC

4. Vendor and UMMC agree that UMMC is authorized to terminate the Agreement if UMMC determines that Vendor has violated a material term of this Addendum in accordance with the terms of the Agreement.

5. Vendor will defend and indemnify UMMC from and against any and all claims, damages, liabilities, losses and expenses (including reasonable attorney's fees) based upon or arising out of Vendor's alleged or actual improper Use or Disclosure of PHI. If UMMC requires, Vendor shall obtain and maintain insurance coverage (if available) against Vendor's improper Use and Disclosures of PHI. Any insurance coverage shall name UMMC as an additional insured. Promptly following UMMC's written request, Vendor shall deliver to UMMC a certificate evidencing UMMC's maintenance of such insurance. The foregoing provisions of this Section 5 shall survive termination or expiration of the Agreement.

6. Except as modified herein, the terms of the Agreement remain in full force and effect.

**IN WITNESS WHEREOF**, UMMC and Vendor have executed this Addendum as of the day and year first written above by their duly authorized representatives.

UNIVERSITY OF MISSISSIPPI MEDICAL CENTER

VENDOR:

By: \_\_\_\_\_

By: \_\_\_\_\_

Carol Denton,  
Chief Integrity and Compliance Officer  
Office of Integrity and Compliance  
University of Mississippi Medical Center  
Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**PROJECT NUMBER 39853**  
**SOFTWARE LICENSE AND APPLICATION SERVICE PROVIDER AGREEMENT**  
**BETWEEN**  
**INSERT VENDOR NAME**  
**AND**  
**MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES**  
**AS CONTRACTING AGENT FOR THE**  
**UNIVERSITY OF MISSISSIPPI MEDICAL CENTER**

This Software License and Application Service Provider Agreement (hereinafter referred to as “Agreement”) is entered into by and between, **INSERT VENDOR NAME**, a **INSERT STATE OF INCORPORATION** corporation having its principal place of business at **INSERT VENDOR STREET ADDRESS** (hereinafter referred to as “Licensor”), and Mississippi Department of Information Technology Services having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as “ITS”), as contracting agent for the University of Mississippi Medical Center, located at 2500 North State Street, Jackson, Mississippi 39216 (hereinafter referred to as “Licensee” and/or “UMMC”). ITS and UMMC are sometimes collectively referred to herein as “State.”

**WHEREAS**, UMMC, pursuant to Request for Proposals (“RFP”) No. 3701 requested proposals for the services of a contractor to host and maintain an Application Service Provider (“ASP”) solution for a Physician Credentialing/Privileging System; and

**WHEREAS**, Licensor was the successful proposer in an open, fair and competitive procurement process to provide the software and services described herein;

**NOW THEREFORE**, in consideration of the mutual understandings, promises and agreements set forth, the parties hereto agree as follows:

**ARTICLE 1 DEFINITIONS**

**1.1 “Active User”** means UMMC employees actively participating on the system in any given month of operation, who shall be bound to the terms and conditions of this Agreement. Licensor does not impose a limit on the number of Active Users accessing or registering to use the system.

**1.2 “Available Date”** means the date upon which Licensor notifies UMMC that the Software may be accessed on the Licensor’s ASP server and UMMC may begin acceptance testing.

**1.3 “Content”** means any content provided by or through Active Users for use with the Software.

**1.4 “Documentation”** means the published user and technical manuals and documentation that Licensor makes generally available for the Software; the help files included within the Software, and any files containing presentation materials or manuals or other related materials to train and educate Licensee and the Active Users on the use of the Software.



**1.5 “Enhancements”** means the corrections, updates, upgrades or new versions of the Software or Documentation that Licensor may provide to Licensee under this Agreement.

**1.6 “Licensee”** means the University of Mississippi Medical Center, its employees, and any third party consultants or outsourcers engaged by UMMC who have a need to know and who shall be bound by the terms and conditions of this Agreement.

**1.7 “Licensor”** means **INSERT VENDOR NAME**, and its successors and assigns.

**1.8 “Products”** means the Software, Documentation, Corrections, Enhancements and any copy of the Software, Documentation, Corrections, or Enhancements provided by the Licensor.

**1.9 “Services”** means any on-line user access, customizations, interface development, consulting, education, ASP installation, system administration, training, maintenance, support, and Help Desk services provided by Licensor to Licensee.

**1.10 “Software”** means the machine-readable object code version of the computer programs whether embedded on disc, tape or other media used for the management of the web-based Physician Credentialing/Privileging System and Supported Interfaces (and any Documentation and help files within the Software), including any Enhancements provided pursuant to the maintenance and support terms identified herein.

**1.11 “Software Error”** means a reproducible defect or combination thereof in the Software that results in a failure of the Software when used in accordance with the Documentation. Software Errors do not include those errors caused by (a) Licensee’s negligence, (b) any unauthorized modification or alteration Licensee makes to the Software, (c) data that does not conform to Licensor’s specified data format, (d) operator error, or (e) use not conforming to the Licensor’s supported technical environment specified in the Documentation.

**1.12 “Supported Interfaces”** means application-based interfaces (API), network protocols, data formats, database schemas, and file formats used in the Software as described in the Documentation.

## **ARTICLE 2 PERIOD OF PERFORMANCE**

**2.1** Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, this Agreement shall begin on the date it is signed by all parties and shall continue in effect until the Licensor completes all tasks required herein pursuant to the project work plan, including services during the three (3) year hosting term. The web-based Physician Credentialing/Privileging system, as customized for the State of Mississippi, must be implemented; fully functional; accepted by UMMC, and all tasks (excluding hosting) required herein, including but not limited to development of required interfaces and training, completed on or before March 31, 2013, unless a change in this date is mutually agreed to in writing by the State and the Licensor. At the end of the three (3) year initial ASP services term, the ASP services may, upon the written agreement of the parties, be renewed under the same terms and

conditions for two (2) additional one-year terms. One hundred and eighty (180) days prior to the expiration of the initial hosting term or any renewal hosting term of this Agreement, Licensor shall notify UMMC and ITS of the impending expiration and UMMC shall have sixty (60) days in which to notify Licensor of its intention to either renew or cancel the ASP services.

**2.2** This Agreement will become a binding obligation on the State only upon the issuance of a valid purchase order by UMMC following contract execution and the issuance by ITS of the CP-1 Acquisition Approval Document.

### **ARTICLE 3 SCOPE OF SERVICES**

**3.1** The Licensor agrees to provide to UMMC an ASP based Physician Credentialing/Privileging system and Services and associated deliverables required to provide, host and maintain a web based application for UMMC as described in this Agreement. While the scope of work for this project is defined by the contract documents set forth herein in the article titled "Entire Agreement", a summary of such work is outlined in Article 3.5 below.

**3.2** The Licensor acknowledges that UMMC intends to be actively involved in the day-to-day progress of the project. The Licensor agrees to (a) obtain UMMC's approval of all tasks and the time schedule for completion of said tasks prior to commencing performance, if not already contained in the approved project work plan; (b) make available to the State project team members all project work papers and work-in-progress for review; (c) ensure that the Licensor Project Manager works closely together with the State Project Manager, (d) provide UMMC access to the host website; (e) meet with UMMC on a regular basis at a mutually agreeable time, and as otherwise requested by UMMC, to discuss the status of the project, and (f) if required by UMMC, submit written project status reports.

**3.3** The parties understand and agree that the project shall be structured with interim deliverables as set forth in the agreed upon project work plan so as to allow UMMC an opportunity to accept or reject the deliverables, including but not limited to, specifications, requirement definitions, process designs, data analyses, web layouts, screen layouts, and report layouts. The actual customizations shall not begin until after UMMC has communicated its conceptual approval of the results the Licensor plans to provide. UMMC shall have ten (10) business days to review interim materials, which review period can only be reduced by mutual agreement of the Licensor and UMMC.

**3.4** It is understood by the parties that the project work plan must be in place within fifteen (15) business days of execution of this Agreement and prior to any other work being performed. Once this mutually agreed upon project work plan, which will identify specific time frames and deliverable target dates for this project, has been developed, it will be incorporated into and made a part of this Agreement. The dates in the project work plan will define the agreed upon period of performance. The parties acknowledge that the project work plan will evolve and change from time to time upon the mutual written agreement of both parties. The parties agree that the deliverables and schedule set forth in the latest version of the project work plan will take precedence over any prior plans.

**3.5** Licensor shall be responsible for the following:

- A.** Ensuring that all deliverables are complete and accepted by UMMC pursuant to the mutually agreed upon project work plan;
- B.** Ensuring that the host site complies with PriorityOne of the World Wide Web Consortium's (W3C's) Web Accessibility Initiative and guidelines in Section 508 of the Rehabilitation Act that are not covered in W3C Priority;
- C.** Ensuring that the site is accessible through UMMC's published universal resource locator ("URL") rather than through Licensor's site address;
- D.** Reviewing with UMMC the Content a minimum of once a quarter to ensure that the Content remains timely and accurate and reaching an agreement with UMMC as to reasonable timelines for implementing Content updates delivered to the Licensor that will be posted on the site;
- E.** Tracking date sensitive items to ensure timely updates;
- F.** All Content provided by the Licensee and collected by the Software shall remain the sole and exclusive property of the Licensee. Upon the termination or expiration of this Agreement, Licensor shall provide such Content in its possession to the Licensee pursuant to a mutually agreed upon release schedule. UMMC, at UMMC's expense, reserves the right to conduct an audit to ensure that all data has been returned to UMMC or destroyed;
- G.** Working with UMMC to achieve access rates that meet UMMC's needs;
- H.** Providing security for the host site that is agreeable to UMMC with Licensor responsible for all necessary equipment and software related to security;
- I.** Maintaining the accessibility of the site twenty-four (24) hours a day, seven (7) days a week at an uptime rate of 99% or greater, subject to the limitations set forth in this Agreement, including but not limited to, those in Article 4.4;
- J.** Completing daily backups of the site;
- K.** Notifying UMMC at least three (3) business days prior to any anticipated service interruption, with said notice containing a general description of the reason for the service interruption;
- L.** Proposing and adhering to a disaster recovery plan and providing access to such plan to the State, all at Licensor's expense;
- M.** Participating with UMMC in disaster recovery planning and testing based on a mutually agreed upon schedule;
- N.** Maintaining the confidentiality of the data entered;
- O.** Providing UMMC access to all of the technical information concerning operation of the site, including but not limited to, server specifications, Internet connection information, personnel requirements and software implementations;
- P.** Identifying any commercially available software, by vendor and version number, integrated into the Products and describing the particular functionality of any software that is proprietary to the Licensor;
- Q.** Maintaining the host site, with the cost for such support, maintenance, and hosting for years following the initial three (3) year period not increasing annually beyond five percent (5%) or the percent increase in the consumer price index for all Urban Consumers, US City Average (C.P.I.-U) for the preceding year, whichever is less;

- R.** Providing 24x7x365 support of the web site, including sub-domain support;
- S.** Providing redundant internet connections;
- T.** Providing Dual T1 or greater connectivity;
- U.** Providing FTP and remote configuration access;
- V.** Providing SSL secure server support;
- W.** Providing monthly reports containing line utilization, site availability statistics, network usage, security user access reports and system performance data to UMMC;
- X.** Maintaining sufficient bandwidth and server capacity to meet UMMC and Active Users' demand as it may fluctuate and increase during the term of this Agreement, and
- Y.** Ensuring that upon termination or expiration of this Agreement that transition of the site from the Licensor to UMMC or to a successor host will be accomplished at no expense to UMMC, and with minimal interruption of the site's accessibility and insignificant changes in the site's appearance and functionality.

**3.6** In the event Licensor creates any revisions to or upgrades of the system, Licensor shall provide Licensee thirty (30) days written notification of such revision or upgrade, and shall, upon request of Licensee, furnish such revision or upgrade to Licensee free of charge as part of the ASP fees.

#### **ARTICLE 4 SCOPE OF LICENSE AND HOSTING SERVICES**

**4.1** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive and non-transferable license to access the Software over the Internet and to use it for Licensee's business operations and use it on the Licensor's host server for the initial term of the Agreement and any subsequent renewal hosting terms in accordance with, and subject to, the terms and conditions set forth in this Agreement. Licensee and Active Users are granted access to the Software, Products and Services twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty five (365) days a year, subject to regularly scheduled maintenance and required repairs. The terms and conditions of this Agreement will apply to any Enhancements or additional Software Products Licensee may procure from Licensor.

**4.2** Licensor will provide Licensee storage space on and access to Licensor's Software via the Internet and provide Internet access to the Software to the Active Users through Licensor's site ("ASP Services").

**4.3** In connection with the ASP Services, Licensor will provide and maintain all Software and hardware, including, but not limited to, the server hardware and software, telecommunications hardware and software, security hardware and software and other software that is reasonably necessary to operate and maintain the Software.

**4.4** The Software will be accessible at least ninety nine percent (99%) of the time, twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the ASP Services due to causes beyond the control of Licensor. In the event that UMMC or an Active User is unable to achieve the 99% application availability during any given month, excluding scheduled maintenance, required repairs, and unavailability due to causes beyond the control of Licensor, the Licensor shall

reimburse UMMC twenty five percent (25%) of the monthly ASP hosting fees for each twenty-four (24) hour day during which there were any incidents of unavailability. Licensors shall maintain the server at a secured location with restricted access.

**4.5** Licensors shall provide the Licensee with its standard managed firewall service, which shall enable secure delivery of Licensors' application services using fully redundant hardware-based firewalls. Licensors' managed firewall service will be available twenty-four (24) hours a day, seven (7) days a week.

**4.6** The use of the Software by Active Users will be governed solely by the terms and conditions of this Agreement.

**4.7** Licensors acknowledges that the Content is and shall remain the sole and exclusive property of Licensee. Further, Licensors acknowledges that the Content may contain valuable trade secrets of Licensee and Licensors agrees to maintain the confidentiality of the Content and shall not make the Content publicly available except as may be necessary in performing the ASP Services.

**4.8** Licensee acknowledges that the Software Products shall remain the exclusive property of Licensors. Licensee agrees that except as noted herein, it will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer any of the Software without the prior written consent of Licensors.

**4.9** Data Storage Location: It is agreed that the State's data must, at all times, be housed in a physical storage location within the United States.

**4.10** Access to Data: The State, at its sole discretion, shall have the right to access and retrieve its data as determined necessary by the State.

**4.11** Data Breaches: Should Licensors experience a data breach or unauthorized access to the State's data, Licensors must notify the State as defined in Section 75-24-29 of the Mississippi Code Annotated, as amended.

**4.12** Security & Infrastructure Audit: A third-party provider approved by Licensors and the State, shall have the right to perform a one-time onsite audit and/or inspection related to Licensors' infrastructure and security, including but not limited to penetration testing and vulnerability assessments. Any such audit and/or inspection shall be conducted at Licensors' expense. Any reports produced from these audits and inspections and resulting remediation plans shall be provided to the State for review.

## **ARTICLE 5 DELIVERY; RISK OF LOSS, AND ACCEPTANCE**

**5.1** Licensors shall deliver, install, and make available the Software and Documentation to the Licensors' hosting environment, except as otherwise specified, and pursuant to the delivery schedule mutually agreed to by the parties.

**5.2** Licensor shall assume and bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout Licensor's possession thereof.

**5.3** UMMC shall have thirty (30) calendar days after the Available Date to evaluate and conduct the final acceptance testing of the Software to confirm that it performs without any defects and performs in accordance with the requirements of this Agreement. UMMC shall immediately thereafter notify Licensor of any defects in the Software, which must be corrected. Thereafter, Licensor shall have ten (10) business days in which to either repair or replace the defective Software unless both parties agree to extend this period, all at Licensor's expense. In the event Licensor is unable to repair or replace the Software within this ten (10) day period, UMMC may terminate this Agreement pursuant to the Termination Article herein.

## **ARTICLE 6 CONSIDERATION AND METHOD OF PAYMENT**

**6.1** The total compensation to be paid to the Licensor by UMMC for all development, maintenance and ASP services, customizations, products, travel, performances and expenses under this Agreement shall not exceed the specified sum of \$**INSERT TOTAL COMPENSATION**, and shall be payable as set forth in the Payment Schedule attached hereto as Exhibit A.

**6.2** Licensor shall submit invoices with the appropriate documentation to UMMC monthly for any month in which ASP services and/or other Services are rendered. Licensor shall submit invoices and supporting documentation to UMMC electronically during the term of this Agreement using the processes and procedures identified by the State. UMMC agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by UMMC within forty-five (45) days of receipt of the invoice. Licensor understands and agrees that UMMC is exempt from the payment of taxes. All payments shall be in United States currency. Payments by state agencies using the Statewide Automated Accounting System ("SAAS") shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Licensor's choice. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Licensor shall remain responsible and liable for full performance.

**6.3** Acceptance by the Licensor of the last payment due from UMMC under this Agreement shall operate as a release of all claims for money against the State by the Licensor and any subcontractors or other persons supplying labor or materials used in the performance of the work under this Agreement.

## **ARTICLE 7 WARRANTY**

**7.1** Licensor represents and warrants that it has the right to license the Products provided under this Agreement.

**7.2** Licensor represents and warrants that the Products provided by Licensor shall meet or exceed the minimum specifications set forth in RFP No. 3722 and Licensor's Proposal, as

accepted by the State, in response thereto.

**7.3** During the term of this Agreement, the Licensor represents and warrants that all deliverables shall be free from any defect, deficiency, faultiness, imperfection, inadequacy, incompleteness or other condition (collectively referred to herein as “Defect”) which would render any such deliverable inoperable in any way or which would prevent full performance in accordance with this Agreement. This warranty includes, without limitation, correction of errors, design deficiencies, performance deficiencies, and incorrect or defective Documentation, including those found during acceptance testing, implementation, and the warranty period. Acceptance testing shall not in any way relieve the Licensor of its responsibilities to correct any Defect during the warranty period. The Licensor shall repair any Defect at no cost to the State within ten (10) business days of receiving notice of the Defect from the State, unless UMMC consents in writing to a longer period of repair time. In the event Licensor is unable to repair or replace the Software within the mutually agreed upon time frame after receipt of notice of the Defect, UMMC shall be entitled to a full refund of fees paid and shall have the right to terminate this Agreement in whole or in part as provided for in the Termination Article herein. Licensee’s rights hereunder are in addition to any other rights Licensee may have.

**7.4** During the term of this Agreement, the Licensor represents and warrants that its Services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such Services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, Licensor shall perform the Services again, at no cost to the State, or if Licensor is unable to perform the Services as warranted, Licensor shall reimburse the State the fees paid to Licensor for the unsatisfactory Services.

**7.5** Licensor represents and warrants that neither the Software, nor Enhancements shall contain a disabling code, lockup program or device. Licensor further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Licensee’s licensed use of the Software, or Enhancements and/or which would restrict Licensee from accessing its data files or in any way interfere with the transaction of Licensee’s business. For any breach of this warranty, Licensor at its expense shall, within ten (10) business days after receipt of notification of the breach, deliver Products to Licensee that are free of such disabling code, lockup program or device.

**7.6** Licensor represents and warrants that neither the Software, nor Enhancements delivered to Licensee contain a computer virus. For purposes of this provision, a computer virus shall be defined as code intentionally inserted in the Software or Enhancements that will damage or destroy Licensee’s applications or data. For any breach of this warranty, Licensor at its expense shall, within five (5) business days after receipt of notification of the breach, deliver Products to Licensee that are free of any virus, and shall be responsible for repairing, at Licensor’s expense, any and all damage done by the virus to Licensee’s site.

**7.7** The Licensor represents and warrants that, upon completion of the project, the Licensor,

and all subcontractors, if any, shall convey to UMMC copies of all interim reports, cost records, data collection forms, and any working papers that support the final acceptance.

**7.8** Licenser represents and warrants that it has obtained all necessary rights to permit use of the graphics on the site and that the Licenser shall provide UMMC with evidentiary proof of graphic licenses and releases. Further, the Licenser represents and warrants that all Licenser-supplied graphics and content contains no scandalous or libelous material.

**7.9** The Licenser represents and warrants that the deliverables provided to UMMC under this Agreement, and their use by Active Users, will not infringe or constitute an infringement of any copyright, patent, trademark, servicemark, trade secret or other proprietary right of any person or entity. Licensee agrees that it will promptly notify Licenser in writing of any such claim or action of which it has knowledge, and that it will cooperate fully in the defense and investigation of the claim by supplying Licenser all relevant information currently available and in its possession, all at Licenser's expense. Licenser shall, to the extent authorized by Mississippi law, have sole control over the defense or settlement of any such claim or action. Licenser, at its own expense, shall defend or settle any and all infringement actions filed against Licenser or the State which involve the deliverables or other items provided under this Agreement and shall pay all settlements, as well as all costs, attorney fees, damages and judgment finally awarded against the State. If, in any such suit arising from such claim, the continued use of the items for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Licenser shall, at its expense: (a) procure for the State the right to continue using such items, or (b) modify or replace them with non-infringing items with equivalent functionality, or, to the extent (a) or (b) cannot be done despite Licenser's commercially reasonable efforts, (c) refund to the State the fees previously paid by the State for the infringing Products. Said refund shall be paid within ten (10) business days of notice to the State to discontinue said use. In addition to the foregoing, the Licenser shall indemnify the State in accordance with the provisions of Article 18 herein.

**7.10** Licenser represents and warrants that the host site provided by the Licenser shall be reasonably expandable and scalable so UMMC can add and support additional business functions and users over time. It is understood and agreed that any standard revisions, enhancements, improvements, and upgrades to the licensed Software and host site equipment during the term of this Agreement, including operating system, database management system, and other software, shall be provided by Licenser to UMMC at no additional cost to UMMC.

**7.11** Licenser represents and warrants that it presently has and will continue to maintain, at its own expense, throughout the term of this Agreement, valid licenses for all software, trademarks, service marks, patents and copyrighted material and any other proprietary information of a third party that it will deploy in support of all products Licenser uses in the performance of this Agreement.

**7.12** If applicable under the given circumstances, Licenser represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status



verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Licensor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security where required, to provide a copy of each such verification to the State. Licensor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Licensor understands and agrees that any breach of these warranties may subject Licensor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Licensor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Licensor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

**7.13** Licensor represents and warrants that the system provided pursuant to this Agreement will pass both internal security audits and independent security audits. For any breach of the preceding warranty at any time during which the system is covered by warranty and/or software support, Licensor shall, at its own expense and at no cost to Licensee, remediate any defect, anomaly or security vulnerability in the system by repairing and/or replacing any and all components of the system necessary in order for the system to be secure.

**7.14** Licensor represents and warrants that no official or employee of Licensee or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Agreement. The Licensor warrants that it has removed any material conflict of interest prior to the signing of this Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Agreement. The Licensor also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

**7.15** The Licensor represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Licensor, terminate the right of the Licensor to proceed under this Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Licensor to any officer or employee of the State of Mississippi with a view toward securing this Agreement or securing favorable treatment with

respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Licensor as it would pursue in the event of a breach of contract by the Licensor, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

## **ARTICLE 8 EMPLOYMENT STATUS**

**8.1** Licensor shall, during the entire term of this Agreement, be construed to be an independent contractor. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship, or a joint venture relationship.

**8.2** Licensor represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of Licensee.

**8.3** Any person assigned by Licensor to perform the Services hereunder shall be the employee of Licensor, who shall have the sole right to hire and discharge its employee. Licensee may, however, direct Licensor to replace any of its employees under this Agreement.

**8.4** Licensor shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Licensor nor employees of Licensor are entitled to state retirement or leave benefits.

## **ARTICLE 9 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

Licensor will be responsible for the behavior of all its employees and subcontractors while on the premises of any Licensee location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff and/or students will be asked to leave the premises and may be suspended from further work on the premises. All Licensor employees and subcontractors who will be working at such locations shall be covered by Licensor's comprehensive general liability insurance policy.

## **ARTICLE 10 MODIFICATION OR RENEGOTIATION**

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

## **ARTICLE 11 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

**11.1** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Licensor represents all contractors, third parties, and/or subcontractors

Licensor has assembled for this project. The Licensee is required to negotiate only with Licensor, as Licensor's commitments are binding on all proposed contractors, third parties, and subcontractors.

**11.2** Neither party may assign or otherwise transfer this Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Agreement shall be binding upon the parties' respective successors and assigns.

**11.3** Licensor must obtain the written approval of UMMC before subcontracting any portion of this Agreement. No such approval by UMMC of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of UMMC in addition to the total fixed price agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that UMMC may deem necessary.

**11.4** Licensor represents and warrants that any subcontract agreement Licensor enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Licensee, and that the subcontractor acknowledges that no privity of contract exists between the Licensee and the subcontractor and that the Licensor is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Licensor. The Licensor shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Licensor's failure to pay any and all amounts due by Licensor to any subcontractor, third party licensor, materialman, laborer or the like.

**11.5** All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between the Licensor and the Licensee, where such dispute affects the subcontract.

## **ARTICLE 12 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of UMMC to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement. If the funds anticipated for the fulfillment of this Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to UMMC for the payments or performance due under this Agreement, UMMC shall have the right to immediately terminate this Agreement, in whole or in part, without damage, penalty, cost or expense to UMMC of any kind whatsoever, except for payment for work completed by Licensor and accepted by UMMC prior to termination. The effective date of termination shall be as specified in the notice of termination. UMMC shall have the sole right to determine whether funds are available for the payments or

performances due under this Agreement.

### **ARTICLE 13 TERMINATION**

**13.1** Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) calendar days written notice unless the breach is cured within said thirty (30) day period; (c) UMMC may terminate the Agreement in whole or in part without the assessment of any penalties upon ten (10) calendar days written notice to Licensor if Licensor becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) UMMC may terminate this Agreement in whole or in part for any reason without the assessment of any penalties after giving thirty (30) calendar days written notice specifying the effective date thereof to Licensor. The provisions of this Article 13 do not limit either party's right to pursue any other remedy available at law or in equity.

**13.2** In the event UMMC terminates this Agreement, Licensor shall receive just and equitable compensation for Services rendered by Licensor and accepted by UMMC prior to the termination. Further, upon termination of this Agreement, Licensor shall refund any and all applicable unexpended prorated annual ASP fees previously paid by Licensee.

### **ARTICLE 14 GOVERNING LAW**

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Licensor expressly agrees that under no circumstances shall the State be obligated to pay an attorney's fee, prejudgment interest or the cost of legal action to Licensor. Further, nothing in this Agreement shall affect any statutory rights the parties may have that cannot be waived or limited by contract.

### **ARTICLE 15 WAIVER**

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement. A waiver by either party, to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of that party.

### **ARTICLE 16 SEVERABILITY**

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State's purpose for entering into this Agreement can be fully achieved by the remaining portions of the Agreement that have not been severed.

#### **ARTICLE 17 CAPTIONS**

The captions or headings in this Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or Article in this Agreement.

#### **ARTICLE 18 HOLD HARMLESS**

To the fullest extent allowed by law, Licensor shall indemnify, defend, save and hold harmless, protect and exonerate Licensee, ITS and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by Licensor and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform this Agreement.

#### **ARTICLE 19 THIRD PARTY ACTION NOTIFICATION**

Licensor shall notify UMMC in writing within five (5) business days of Licensor filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Licensor or UMMC by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Licensor's performance under this Agreement. Failure of the Licensor to provide such written notice to UMMC shall be considered a material breach of this Agreement and UMMC may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

#### **ARTICLE 20 AUTHORITY TO CONTRACT**

Licensor warrants that it is a validly organized business with valid authority to enter into this Agreement; that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

#### **ARTICLE 21 NOTICE**

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. UMMC's address for notice is: Ms. Julie Smith, Chief Operating Officer, University of Mississippi Medical Center, 2500 North State Street, Jackson, Mississippi 39216. The Licensor's address for notice is: **INSERT NAME, TITLE, & ADDRESS OF VENDOR PERSON FOR NOTICE**. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

## **ARTICLE 22 RECORD RETENTION AND ACCESS TO RECORDS**

Licensors shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Licensee, ITS, any state or federal agency authorized to audit Licensee, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Licensor's proposals, books, documents, papers and/or records that are pertinent to this Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Licensor's office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Licensor for three (3) years from the date of receipt of final payment under this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

## **ARTICLE 23 INSURANCE**

Licensors represent that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Licensor's personnel, as well as comprehensive general liability and employee fidelity bond insurance. Licensor will, upon request, furnish UMMC with a certificate of conformity providing the aforesaid coverage.

## **ARTICLE 24 DISPUTES**

Any dispute concerning a question of fact under this Agreement which is not disposed of by agreement of the Licensor and Licensee, shall be decided by the Executive Director of ITS or his/her designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

## **ARTICLE 25 COMPLIANCE WITH LAWS**

Licensors shall comply with, and all activities under this Agreement shall be subject to, all Licensee policies and procedures which Licensor has received copies of, and all applicable federal, state, and local laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Licensor shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin or disability.

## **ARTICLE 26 CONFLICT OF INTEREST**

Licensors shall notify UMMC of any potential conflict of interest resulting from the provision of services to other customers. If such conflict cannot be resolved to UMMC's satisfaction, UMMC reserves the right to terminate this Agreement.

## **ARTICLE 27 SOVEREIGN IMMUNITY**

By entering into this Agreement with Licensor, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

## **ARTICLE 28 CONFIDENTIAL INFORMATION**

**28.1** Licensors shall treat all Licensee data and information to which it has access by its performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Licensee. In the event that Licensors receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a validly issued judicial order requiring divulgence of such information, Licensors shall promptly inform Licensee and thereafter respond in conformity with such court order to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement and shall continue in full force and effect and shall be binding upon the Licensors and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Agreement on behalf of, or under the rights of the Licensors following any termination or completion of this Agreement.

**28.2** Licensors acknowledges and agrees that UMMC's and Active User's confidential information includes all medical and other personal or private information of UMMC and its Active Users and any of the customers, insured, patients, physicians, employees or otherwise of UMMC, used or gained by Licensors during the performance of this Agreement or in any other manner ("Personal Privacy Information"). Licensors's obligations with respect to the Personal Privacy Information are not subject to the exclusions set forth below and are not limited in duration or in any other way.

**28.3** Licensors and UMMC shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("the Disclosing Party") which: (a) is or becomes known to the public without fault or breach of the party receiving confidential information of the Disclosing Party ("the Recipient"); (b) is furnished by the Disclosing Party to third parties without restriction on subsequent disclosure; (c) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation; (d) is already in the Recipient's possession without an obligation of confidentiality; or (e) is independently developed by Recipient without reliance on the confidential information.

**28.4** Upon termination of this Agreement or upon demand therefore, each party agrees to promptly return to the other party all confidential information of the other party, including all copies thereof in any form, and to certify to the other party in writing that it has not retained any copies thereof.

**28.5** With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Licensors. ITS will provide third party notice to Licensors of any requests received by ITS for any such confidential exhibits so as to allow Licensors the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

**28.6 Protected Health Information ('PHI'):** To the extent required, UMMC and Licensors

intend to comply with the applicable provisions of the HIPAA Privacy Rule and Security Regulations (45 CFR Parts 160, 162 and 164) (“Privacy Rule” and “Security Regulations”, individually; or “Privacy and Security Regulations”, collectively) and the applicable provisions of the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (the “HITECH Act”) as further defined in the Business Associate Addendum, when applicable attached hereto as Exhibit B, or as executed by the parties separate from this Agreement, as the case may be.

#### **ARTICLE 29 EFFECT OF SIGNATURE**

Each person signing this Agreement represents that he or she has read the Agreement in its entirety, understands its terms, is duly authorized to execute this Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, this Agreement shall not be construed or interpreted in favor of or against the State or the Licensors on the basis of draftsmanship or preparation hereof.

#### **ARTICLE 30 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS**

All Content collected by the Software shall be the property of Licensee. Licensors may use the Content only in the performance of this Agreement, unless otherwise agreed upon between the parties. Licensee acknowledges that the Products shall remain the exclusive property of Licensors and are excluded from this Article.

#### **ARTICLE 31 NON-SOLICITATION OF EMPLOYEES**

Licensors agree not to employ or to solicit for employment, directly or indirectly, any of UMMC’s employees until at least one (1) year after the expiration/termination of this Agreement unless mutually agreed to the contrary in writing by UMMC and the Licensors and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government.

#### **ARTICLE 32 ENTIRE AGREEMENT**

**32.1** This contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto, including all terms of any “shrink-wrap”, “click-wrap” or “browse-wrap” license of the Software. The RFP No. 3722, and Licensors’ Proposal, as accepted by the State, in response thereto are hereby incorporated into and made a part of this Agreement.

**32.2** The contract made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following:

- A.** This Agreement signed by the parties hereto;
- B.** Any exhibits attached to this Agreement;
- C.** RFP No. 3722 and written addenda, and
- D.** Licensors’ Proposal, as accepted by the State, in response to RFP No.3722.

**32.3** The intent of the above listed documents is to include all items necessary for the proper



execution and completion of the services by the Licensor. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. This Agreement") and the lowest document is listed last ("D. Licensor's Proposal").

### **ARTICLE 33 STATE PROPERTY**

Licensor shall be responsible for the proper custody of any Licensee-owned property furnished for Licensor's use in connection with Services performed pursuant to this Agreement. Licensor shall reimburse the Licensee for any loss or damage, normal wear and tear excepted.

### **ARTICLE 34 SURVIVAL**

Articles 7, 14, 18, 22, 27, 28, 30, 31, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

### **ARTICLE 35 DEBARMENT AND SUSPENSION CERTIFICATION**

Licensor certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

### **ARTICLE 36 SPECIAL TERMS AND CONDITIONS**

It is understood and agreed by the parties to this Agreement that there are no special terms and conditions except as specifically provided in this Agreement.

### **ARTICLE 37 STATUTORY AUTHORITY**

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the executive director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology

equipment, software and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of the Licensee's or Licensors contractual obligations, financial or otherwise, contained within this Agreement.

### **ARTICLE 38 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

Licensors and Licensee understand and agree that all products and services provided by Licensors under this Agreement must be and remain in compliance with the State of Mississippi's Enterprise Security Policy. The parties understand and agree that the State's Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution. The State reserves the right to introduce a new policy during the term of this Agreement and require the Licensors to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

### **ARTICLE 39 SOFTWARE SUPPORT AND MAINTENANCE**

**39.1** As part of the Software support and maintenance services, Licensors will maintain the Products in an operable condition according to the specifications contained in the technical manuals and as outlined in RFP No. 3722 and the Licensors Proposal in response thereto. Licensors shall provide Licensee with Enhancements to the Software as they are made generally available from time to time. Notwithstanding any other provisions of this Agreement, Licensors shall provide support only with respect to the then-current generally available version of the Software.

**39.2** Licensors shall also provide unlimited email and toll-free telephone technical support in the operation of the Software Products twenty-four (24) hours a day, seven (7) days a week. Licensors shall respond by telephone within one (1) hour to requests for support services. Licensee shall be given priority placement in the support queue for all system locking situations or problems claimed by Licensee to be a mission critical process. Upon receipt of Licensee's call, Licensors will (a) create an error report, (b) assign a severity level and (c) attempt to resolve the Software problem in accordance with the procedures and processes for problem resolution detailed below. It is understood by the parties that the Licensee and Licensors must mutually agree on whether an error is classified as a Severity Level 1, 2, or 3 error.

**39.3** Severity Level 1 implies that the Software is not functioning. Some examples of Severity Level 1 Software problems are as follows: (a) Software is down and will not restart; (b) Software is not able to communicate with external systems; and (c) Software is generating a data corruption condition. Licensors shall resolve Severity Level 1 Software Errors within one (1) business day, or within a mutually agreed upon time frame. When a Severity Level 1 Software Error is reported, Licensors will assign resources necessary to correct the Software Error. If access to the Software is required, Licensee will provide a contact available to Licensors and access to Licensee's system and other software for the duration of the error correction procedures.

**39.4** Severity Level 2 implies that (a) an essential function does not work as documented, or (b) testing and usage can continue but the task cannot be completed, and no workarounds exist.

Licensors shall assign at least one (1) dedicated person to the problem and shall resolve Severity Level 2 Software Errors within two (2) business days, or within a mutually agreed upon time frame.

**39.5** Severity Level 3 implies a Software Error such that implementations of function do not match specification and/or technical Documentation, and a workaround may exist. Licensors shall resolve Severity Level 3 Software Errors within ten (10) business days, or within a mutually agreed upon time frame.

#### **ARTICLE 40 FORCE MAJEURE**

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Licensors shall notify the Licensee immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate this Agreement.

For the faithful performance of the terms of this Agreement, the parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

**State of Mississippi, Department of  
Information Technology Services, on  
behalf of the University of Mississippi  
Medical Center**

By: \_\_\_\_\_  
Authorized Signature

Printed Name: **Craig P. Orgeron, Ph.D.**

Title: **Executive Director**

Date: \_\_\_\_\_

**INSERT VENDOR NAME**

By: \_\_\_\_\_  
Authorized Signature

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**PAYMENT SCHEDULE**

**EXHIBIT B**  
**BUSINESS ASSOCIATE ADDENDUM**

**ADDENDUM**

Addendum No.: \_\_\_\_\_  
BAA

**BACKGROUND**

**WHEREAS,** The University of Mississippi Medical Center (“UMMC”) and \_\_\_\_\_ (“Vendor”) are parties to that certain Software License and Application Service Provider Agreement dated \_\_\_\_\_, \_\_\_\_\_, (the “Agreement”) pursuant to which Vendor provides certain services to UMMC and, in connection with those services, UMMC discloses to Vendor certain information (“Protected Health Information” or “PHI”) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, (as may be now or hereafter amended or modified, “HIPAA”). Vendor acknowledges that as a Business Associate, it is responsible to comply with the HIPAA Security and Privacy regulations, pursuant to Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”), including Sections 164.308, 164.310, 164.312, and 164.316 of title 45 of the Code of Federal Regulations, effective upon the applicable compliance dates set forth in HITECH § 13423 (the “Effective Time”); and

**WHEREAS,** Vendor, as a recipient of protected information from UMMC, is a “Business Associate” as that term is defined in HIPAA and regulations promulgated by the U.S. Department of Health and Human Services to implement certain provisions of HIPAA (herein “HIPAA Regulations”); and

**WHEREAS,** pursuant to the HIPAA regulations, all Business Associates of entities such as UMMC must agree in writing to certain mandatory provisions regarding the Use and Disclosure of individually identifiable health information; and

**WHEREAS,** the purpose of this Addendum is to satisfy the requirements of the HIPAA and HITECH Regulations.

**NOW, THEREFORE,** in consideration of the foregoing and of the desire of UMMC and Vendor to continue providing or receiving services under the Agreement, the parties agree as follows effective as of the Effective Time:

1. Unless otherwise provided in this Addendum, capitalized terms have the same meaning as set forth in the HIPAA Regulations. The term “UMMC” shall further include any affiliate of the UMMC, and “Administrative Safeguards” shall have the same meaning as the term “administrative safeguards” as defined in HIPAA with the exception that it shall apply to the management of the conduct of Vendor’s workforce, rather than UMMC’s workforce, in relation

to the protection of that information.

2. Vendor specifically agrees that it will comply in all material respects with HIPAA when Using or Disclosing PHI received by Vendor from or on behalf of UMMC, including:

- a. not Use or further Disclose PHI other than as permitted or required by the Agreement or as required by law;
- b. use appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by the Agreement;
- c. report to UMMC any use or disclosure of the PHI not provided for by the Agreement of which Vendor becomes aware;
- d. ensure that any agents, including a subcontractor, to whom it provides PHI received from, or created or received by Vendor on behalf of, UMMC agrees in writing to the same restrictions and conditions that apply to the Vendor with respect to such PHI and Vendor will identify all such agents and subcontractors to UMMC;
- e. as required under and within the period of time permitted under 45 C.F.R. §164.524, Vendor shall permit any individual whose PHI is maintained by Vendor to have access to and to obtain a copy of his or her PHI, in the format requested unless it is not readily producible in such format, in which case it shall be produced in hard copy format. The foregoing shall be applicable only if the records of Vendor are considered a Designated Record Set at the time of the request. Vendor may charge a reasonable, cost-based fee as permitted under 45 C.F.R., §164.524 (e)(4);
- f. for so long as PHI of an individual is maintained in a Designated Record Set maintained for UMMC, grant an individual the right to amend his or her PHI and incorporate any amendments to the PHI in accordance with 45 C.F.R. §164.526;
- g. make available the information required to provide an accounting of Disclosure in accordance with 45 C.F.R. §164.528. Such an accounting shall provide:
  - The date of each Disclosure
  - The name and address of the organization or person to whom the Protected Health Information was Disclosed;
  - A brief description of the information Disclosed;
  - Disclosures, other than those made at the request of the Individual, the purpose for which the information was Disclosed or a copy of the request or authorization for Disclosure.

Vendor will provide the above accounting to UMMC as promptly as possible, but in any event no later than thirty (30) days after UMMC's request therefore.

- h. make its internal practices, books, and records relating to the Use and Disclosure of PHI received from, or created or received by Vendor on behalf of UMMC available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining the UMMC's compliance with HIPAA; and
- i. at termination of the Agreement, if feasible, return or destroy all PHI received from, or created or received by Vendor on behalf of UMMC that the Vendor still maintains in any form and retain no copies of such information or, if such return is not feasible, extend the protections of the Agreement to make the return or destruction of the information feasible;
- j. use reasonable commercial efforts to mitigate any harmful effect that is known to Vendor of a Use or Disclosure of PHI by Vendor in violation of the requirements of this Addendum;
- k. implement Administrative Safeguards, Physical Safeguards, and Technical Safeguards (the "Safeguards") in accordance with HIPAA that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of UMMC, as required by 45 C.F.R. Part 164 Subpart C;
- l. ensure that any agent and subcontractor to whom Vendor provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect Electronic PHI;
- m. make its policies, procedures, and documentation required by the Security Rule relating to the Safeguards available to the Secretary of the Department of Health and Human Services for purposes of determining UMMC's compliance with the Security Rule;
- n. request and Use or Disclose only the Minimum Necessary amount of Protected Health Information to serve the intended purposes of the Agreement;
- o. Vendor will not export PHI, nor permit subcontractors or agents to export PHI beyond the borders of the United States of America;
- p. Vendor shall report promptly to UMMC any successful Security Incident of which Vendor becomes aware; provided, however, that with respect to attempted unauthorized access, Use or Disclosure, modification, or destruction of information or interference with system operations in an information system affecting electronic PHI, such report to UMMC will be made available upon request;
- q. upon the Effective Time, if Vendor accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, Uses or Discloses Unsecured Protected Health Information (as defined by HITECH Sec. 4402(h)(1)), it shall, following the discovery of

a breach of such information, promptly notify UMMC of such breach, but in any event no later than fifteen (15) days of discovery. Such notice shall include the identification of each individual whose Unsecured PHI has been or is reasonably believed by Vendor to have been accessed, acquired, or Disclosed during such breach.

3. Vendor, in its capacity as Business Associate to UMMC, shall be permitted to Use and Disclose PHI in a manner that would not violate the requirements of the HIPAA Regulations as follows:

- i. for the proper management and administration of Vendor;
- ii. to carry out the legal responsibilities of Vendor; and
- iii. to provide data aggregation services relating to the health care operations of UMMC

4. Vendor and UMMC agree that UMMC is authorized to terminate the Agreement if UMMC determines that Vendor has violated a material term of this Addendum in accordance with the terms of the Agreement.

5. Vendor will defend and indemnify UMMC from and against any and all claims, damages, liabilities, losses and expenses (including reasonable attorney's fees) based upon or arising out of Vendor's alleged or actual improper Use or Disclosure of PHI. If UMMC requires, Vendor shall obtain and maintain insurance coverage (if available) against Vendor's improper Use and Disclosures of PHI. Any insurance coverage shall name UMMC as an additional insured. Promptly following UMMC's written request, Vendor shall deliver to UMMC a certificate evidencing UMMC's maintenance of such insurance. The foregoing provisions of this Section 5 shall survive termination or expiration of the Agreement.

6. Except as modified herein, the terms of the Agreement remain in full force and effect.

**IN WITNESS WHEREOF**, UMMC and Vendor have executed this Addendum as of the day and year first written above by their duly authorized representatives.

UNIVERSITY OF MISSISSIPPI MEDICAL CENTER

VENDOR:

By: \_\_\_\_\_

By: \_\_\_\_\_

Carol Denton,  
Chief Integrity and Compliance Officer  
Office of Integrity and Compliance  
University of Mississippi Medical Center  
Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## **ATTACHMENT B SYSTEM REQUIREMENTS**

For each Requirement/Item Number, the Vendor must respond with the appropriate letter in the “Response” column in the System Requirements table. The following table provides a response key:

<b>Response</b>	<b>Description</b>
X	Exceeds Specifications
B	Exists in the Base System (i.e., in version of the software being proposed)
M	Minor Customization (i.e., a modification that would require less than 40 hours to implement)
C	Custom Enhancement (i.e., an enhancement that would require in excess of 40 hours to implement)
A	Alternate Solution
N	Not Supported (the proposed solution does not support this requirement and a customization, enhancement or alternate solutions is not proposed)

Additionally, Vendor must detail, in the Required Explanation, the manner in which the proposed solution addresses each requirement according to the following:

- If “X” is specified, Vendor must explain the additional benefits of the product for the specification;
- If “M” is specified, Vendor must indicate whether the Vendor has ever implemented this modification before. Vendor must indicate what additional costs, if any, will be incurred as well as the estimated time frame for completion of this Minor Customization;

- If “C” is specified, Vendor must indicate whether the Vendor has ever implemented this modification before. Vendor must indicate what additional costs, if any, will be incurred as well as the estimated time frame for completion of this Custom Enhancement; and
- If “A” is indicated, Vendor must indicate how the alternate solution will meet the needs of UMMC and whether the Vendor has used this alternate solution in the past.

Category	Item #	Requirement	Vendor Response (X, B, M, C, A, or N)	Required Explanation
Technical Requirements	1.1	The product must provide a secure, internet-based website compatible with Internet Explorer, Firefox, and Safari for providers to complete initial and reappointment applications using a variety of devices to access the internet, including but not limited to personal and tablet computers. The product must also allow designated personnel to review and sign-off on application packets electronically using this interface.		
	1.2	The product must allow 24/7 access for providers to complete their applications and for staff to process applications.		
	1.3	The product must have predefined provider fields which are able to be supplemented by additional fields defined by UMMC. UMMC must have the ability to enable/disable these fields.		

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	1.4	The product must allow UMMC to define multiple provider types and select different sets of fields for each defined provider type.		
	1.5	The product must allow UMMC to define supporting documentation to be submitted with the application via electronic attachment.		
	1.6	The product must allow providers to, if necessary, complete the application in multiple sessions by saving data entered by the provider and making it available in subsequent sessions.		
	1.7	The product must allow providers to submit supporting documentation and images electronically either by uploading or scanning and attaching the supporting documentation and/or image to the application. The product must have the ability to process and store these attachments with the electronic application.		
	1.8	The product must allow providers to sign and submit the online application and all supporting documentation to the facility electronically.		

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	1.9	The product must have the ability to define the types of data that will be accepted by certain fields and produce a plain English error message if the data does not meet predefined format specifications.		
	1.10	The product must have the ability to determine if required fields in the application have not been populated, highlighting the unpopulated fields and displaying a message indicating that the fields have not been completed.		
	1.11	The product must have the ability to deny submittal of an application if all required fields have not been populated.		
	1.12	The product must have the ability to populate the existing database with information submitted in the electronic application.		
	1.13	The product must have an electronic form for entering privileging information and a process for archiving changes to privilege forms.		
	1.14	The product must have the ability to track cases for peer review and report on trends, generate letters, agendas, etc.		

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	1.15	The product must have the ability to track the peer review process, scores, and activities, and to allow supporting material to be scanned and stored with other peer review process information.		
	1.16	The product must have the ability to generate reports of information stored in the database in both predetermined and custom formats.		
	1.17	The product must have the ability to import, process, and store data migrated from the existing credentialing system.		
	1.18	The product must have the ability to store photographs of physicians.		
<b>Interface Requirements</b>	2.1	The product must have the ability to automatically fax verifications from the system.		
	2.2	The product must have the ability to automatically email verifications from the system.		
	2.3	The product must have the ability to automatically send electronic primary source verification queries to – the American Board of Medical Specialties (ABMS) boards, state licensing agencies, the Drug Enforcement Administration (DEA), the General Services Administration		

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		(GSA), the Office of Inspector General (OIG), the National Practitioner Data Bank (NPDB), etc.		
	2.4	The product must have the ability to retrieve results of electronic primary source verification queries and store the results in the specific provider verification record.		
	2.5	The product must interface with Microsoft Office for document and spreadsheet generation and modification.		
	2.6	The product must have the ability to import and/or export data in multiple formats (at least CSV) to other hospital EMR systems at specified intervals.		
	2.7	The product must have the ability to instantaneously export queried information to web portals in a view-only format used for primary source verification of provider privileges, both internally and externally, based on templates developed by UMMC.		
	2.8.1	The product must be able to provide call center services, i.e., logging calls and adding contacts (callers) to capture the following information: - Caller - Patient (if different from the caller), and - User defined fields (at least 20) that allow		

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		for drop-down selection of call reasons/features		
	2.8.2	The product must be able to log patient consultations.		
	2.8.3	The product must be able to activate/deactivate providers at a specified time daily based on privileging/credentialing information.		
	2.8.4	The product must have the ability to generate reports based on patient call information.		
	2.9	The product must have the ability to transmit performance management data to Lawson HR.		
	2.10	The product must be able to use HL7 (Health Level Seven) data definitions and formats to exchange data (both import and export).		
<b>Security Requirements</b>	3.1	Application security level will determine the level of access each individual has and what that individual will be allowed to view and perform on each screen or field of the application.		
	3.2	Application must provide functionality that supports multi-level security definition/role-based security levels.		

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	3.3	The proposed solution must prevent unauthorized access to the system and must allow UMMC to determine which modules, reports, and data users may access.		
	3.4	The product must provide application, menu level, and field level security and allow setup of inquiry, add, update, and delete access by user and/or group.		
	3.5	The proposed solution must allow the System Administrator to set rights for access of data by individual or group.		
	3.6	The product must provide functionality that supports the assignment of security levels globally, by group and individual user.		
	3.7	The Vendor must discuss the responsibility/process for initial system setup versus ongoing administration of day to day operations. Vendor should include as part of the description, a discussion of the administrative functions that would be performed by UMMC as opposed to the Vendor.		
	3.8	The product must adhere to the password rules below:		



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	3.8.1	The password must be composed of an eight (8) character string that includes a combination of lower and upper case alphanumeric characters and the numerals 0-9, and at least 1 special character;		
	3.8.2	System users must be restricted from using their User ID as the password;		
	3.8.3	The password must be encrypted;		
	3.8.4	The product must only allow UMMC Security Administration to control all aspects of password management;		
	3.8.5	The product must allow the user to change his or her password without intervention from Security Administration, except in the case of password revocation;		
	3.8.6	The product must not allow either the use of the user's full name or the same password when prompted for a new password;		
	3.8.7	The product must provide for automatic notification of expiration of passwords;		
	3.8.8	Security Administration must be able to set a temporary password that will expire after the initial use, forcing the user to set a new password;		

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	3.8.9	The product must ensure that passwords cannot be reused by a single individual within a specified time period to be defined by the System or Database Administrator;		
	3.8.10	Passwords will have a life of 90 days and will expire in 90 days. However, both the expiration period and the lead time period must be configurable by the Security Administrator;		
	3.8.11	The product will only allow three (3) attempts to log in with an invalid password after which the application will revoke it. At that point, the user will be notified by the application that his/her password has been revoked and the user must contact the Security Administrator to have the password reinstated;		
	3.8.12	The product will log and record change history keeping at least 3 prior passwords; and		
	3.8.13	Passwords will be restricted from being reused.		
	3.8.14	Each user must have his or her unique user ID and password; generic user ID/passwords will not be allowed.		
	3.8.14.1	The first time a user logs into the system, a minimum of three (3) security questions should be answered.		

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	3.8.14.2	The proposed product should have a 'Forgot Your Password' link on the login screen. The proposed product should send to the user's email address a temporary password after the user answers a randomly selected security question.		
	3.8.14.3	The user should have the ability to access their security questions in order to change their security questions and/or answers.		
	3.9	The product must have the ability to audit changes made to provider records, creating a history of changes made to the database by each user, including date and time stamp for change(s), field(s) changed, and capture before and after versions of modified data.		
	3.10	The product must have the ability to provide audit log reports.		
<b>System Availability</b>	4.1	If a hosted option is selected, the web portal should have 99% guaranteed availability during weekday hours and 95% uptime on nights and weekends.		
	4.2	If a hosted option is selected, in the event of a planned web portal outage for the purpose of a system upgrade, a message should be displayed on the website no later than three (3) days prior to the planned outage complete with the dates and times of the scheduled outage and/or the date		

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		and time that the system will not be available and the date and time that the system will become available and remain on the website until the system becomes available again.		
<b>Installation / Implementation</b>	5.1	If a non-hosted option is selected, the vendor shall allow UMMC the ability to house a duplicate copy of the software in a test environment for the purpose of training staff and testing product revisions, upgrades, and enhancements prior to deployment in the production environment.		
<b>Acceptance Testing</b>	6.1	Vendor must work with UMMC staff to devise a suite of test and use cases, and test data necessary to prove the performance of the proposed product. This suite must include final acceptance testing criteria.		
	6.2	UMMC will conduct acceptance testing of the product once the product is made available for use to UMMC and all training is completed.		
	6.3	The vendor must participate in the acceptance testing of the product by providing technical staff on-site for assistance in demonstrating the functions of the installed product. UMMC must be in a position to demonstrate that the product is operational to ensure that proper		

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		training has been received and sufficient knowledge transfer has been accomplished.		
	6.4	If a hosted solution is selected, as part of the system acceptance testing, the vendor must assist UMMC in performing a load test to confirm that the ASP host and network configuration possess adequate capacity and speed to drive the Credentialing/Privileging System and user base without degradation.		
	6.5	UMMC will communicate to the vendor regarding any deficiencies identified during either functional or load testing. The vendor must correct deficiencies within ten (10) days of written notice given by the State. The vendor must bear the cost to remedy reported deficiencies. These deficiencies must be corrected and tested by the vendor before submitting the remedy to UMMC for performance or regression testing.		
	6.6	The vendor must agree to and allow for a final acceptance testing period of up to thirty (30) business days from the initiation of acceptance testing and correction of any deficiencies reported by the State.		

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	6.7	Acceptance testing is finished when UMMC has successfully completed all acceptance test criteria defined in the testing suite as defined by UMMC and all critical defects have been corrected by the vendor and successfully re-tested by UMMC and operated without error or defect for the thirty (30) day acceptance period.		
	6.8	Acceptance testing shall not in any way relieve the Vendor of their responsibilities to correct any defect identified during the warranty period.		
	6.9	The State reserves the right to reject the product after the third unsuccessful test of any module of the product.		
<b>Training</b>	7.1	The vendor must be able to provide Web-based training for the product.		
	7.2	The vendor must provide a train the trainer session to UMMC. This session may be delivered either onsite or as web based training.		
	7.3	The vendor must have the ability to provide up to 40 hours of onsite training for the initial implementation, and up to 8 hours of training for upgrades at no additional cost.		
	7.4	The vendor must provide information to UMMC on any product software patches, updates, service releases, and upgrades no		

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		later than the time at which such changes are implemented.		
<b>Warranty and Maintenance Requirements</b>	8.1	Vendor must warrant that the proposed product shall meet or exceed these minimum specifications.		
	8.1.1	Vendor must warrant that all deliverables shall be free from any defect which would render any such deliverable inoperable or which would prevent full performance in accordance with these specifications. This warranty includes correction of errors, design deficiencies, performance deficiencies, and incorrect or defective documentation, including those found during acceptance testing, implementation, and the warranty period.		
	8.1.2	Vendor must propose the standard manufacturer warranty for all proposed software products and services. Vendor must specify the warranty period, during which time maintenance need not be paid. Warranty must cover, at minimum, one (1) hour response to all service-related calls or e-mails during prime-shift hours (8:00 a.m. to 5:00 p.m. Central Time, Monday through Friday). Vendor must describe the proposed warranty.		

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	8.1.3	Vendor must also specify whether extended warranty is being proposed to satisfy these requirements and include the associated period and cost.		
	8.2	Product Maintenance and Software Support.		
	8.2.1	Vendor must propose an annual fixed cost contract to provide ongoing software support services to include problem remediation, maintenance and upgrades. Support must include toll-free telephone support during the hours of 8:00 a.m. to 5:00 p.m. Central Time, Monday through Friday. Vendor must describe the proposed plan.		
	8.2.2	Vendor must maintain the products in an operable condition according to the specifications contained in the technical manuals and as outlined in these specifications and the Vendor's System proposal.		
	8.3	Vendor must provide UMMC with enhancements and updates to the software as they are made generally available.		
<b>Project Management</b>	9.1	Vendor must commit a dedicated Project Manager for the duration of the project implementation. The Project Manager must have sufficient prior experience to address the specifics of this project. Vendor		



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		must include details to substantiate this experience.		
	9.2	The Project Manager must be named in the Vendor's RFP response and must be available for interview by UMMC as part of this RFP evaluation.		
	9.3	Vendor must submit, as a part of this proposal, a high-level Project Work Plan that outlines the overall strategy and approach to providing the requested System and services. The Plan must contain all significant work steps required for provision of the requested services. Timeframes must be specified in terms of work days or weeks after contract signing. The Plan must include the elements listed below.		
	9.3.1	The Plan must incorporate all tasks to be accomplished;		
	9.3.2	The Plan must address all project deliverables, including implementation, acceptance testing, schedule for actual testing and go-live date;		
	9.3.3	The Plan must include resource estimates for both UMMC and Vendor timelines; and		

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	9.3.4	The Plan must address assumptions that the Vendor has made based on the information rendered in these specifications.		
	9.4	Upon contract award, the Vendor's Project Manager must work with UMMC to develop a more detailed Project Work Plan to guide the System's implementation.		
	9.5	The Vendor must describe his change order and staffing strategy under the following circumstances.		
	9.5.1	The Vendor must describe his change order and staffing strategy when a customer requires additional functionality that may be within the capability of the proposed system's existing programming, after the initial system acceptance.		
	9.5.2	The Vendor must describe his change order and staffing strategy when a customer requires additional functionality that may require modification of the proposed system's programmed code and/or the addition of new programming, after initial system acceptance.		
<b>Vendor Requirements</b>	10.1	The Vendor must provide a description of his organization with sufficient information to substantiate proven expertise in the products and services being requested in this RFP. UMMC is seeking a COTS		

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		solution, ground-up development will not be considered.		
	10.2	The Vendor must disclose any company restructurings, mergers, and acquisitions over the past three (3) years.		
	10.3	The Vendor must specify the location of the organization's principal office and the number of executive and professional personnel employed at this office.		
	10.4	The Vendor must state the number of years the Vendor has been providing the products and services being proposed.		
	10.5	The Vendor must specify the organization's size in terms of the number of full-time employees, the number of contract personnel used at any one time, the number of offices and their locations, and structure (for example, state, national, or international organization).		
	10.6	The Vendor must provide the name and the state of incorporation, if incorporated.		
	10.7	The Vendor must indicate the number of implementations his company has performed for state/federal government entities which perform similar functions in their respective state/area/province as are required by this RFP.		

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	10.8	The Vendor must describe the products and services being provided and the stage of development of those products and services.		
	10.9	The Vendor must provide a copy of their company's most recent annual report, including consolidated balance sheets and related statements of income, stockholders' or partners' equity and changes in financial position, for each of the three (3) fiscal years preceding the end of the most recent fiscal year. The financial information listed above should be compiled, reviewed, and/or audited by a Certified Public Accountant.		
	10.10	Vendor must provide an organizational chart identifying all personnel proposed for this project.		
	10.11	Vendor must provide a resume for each of their staff members participating on this project. Resumes must reflect qualifications and recent experience relevant to the scope of the work indicated in this RFP. Resumes must include at least three (3) references that can be directly contacted to verify the individual's qualifications and experience.		

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	10.12	Vendor must ensure that each staff member assigned to this project has the ability to communicate clearly in the English language both verbally and in written form.		